Supreme Court, U.S.
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UNITED STATES SUPREME COURT
WASHINGTON, D. C.
October Term, 1997

In Re: Lawvere vs.
East Lycoming School District, et al.
Appellate Court Case No: 97-7215

Scott and Brenda Lawvere, Ambassadors for Christ
Petitioners

vs.

THE UNITED STATES COURT OF APPEALS,
THIRD CIRCUIT, PHILADELPHIA, PA
Respondent

On Petition for a Writ of Certiorari To the United States Court of Appeals, Third Circuit

PETITION FOR WRIT OF CERTIORARI

Prepared By: Scott and Brenda Lawvere
Ambassadors for Christ,
c/o P.O. Box 46,
Unityville, Penn. 17774
(717)458-4522

96 pp

QUESTIONS FOR REVIEW

1. Where Appellants presented preponderance of evidence and genuine issues of material fact, did the United States Court of Appeals, Third Circuit's decision conflict with decisions by other Court of Appeals decisions?

2. Where there was evidence that Defendants did not act alone under color of law violating Plaintiffs' rights, but with authorization from policymakers, did the U.S. Court of Appeals conflict with decision by other Courts of Appeal on the same subject matter?

3. Where the Clerk of the Appellate Court failed to file the Appellant's motions and gave legal advice to the defendants, did the Clerk (and or the Court) overstep the scope of their office and prejudice Plaintiffs' rights?

4. Where the United States Court of Appeals affirmed the District Court's decision regarding qualified immunity, do the Defendants have immunity if they acted outside the scope of their office under color of law when violating Plaintiffs' rights?

Scott and Brenda Lawvere, Ambassadors for Christ,

Plaintiffs/Appellants

vs.

EAST LYCOMING SCHOOL DISTRICT; ROBIN SCHULLER, Principal; J. HOWARD LANGDON, Attorney; C. ROGER MCRAE, District Magistrate; PENNSYLVANIA STATE CONSTABLES; GURN WEBER, CONSTABLE OLD LYCOMING TWP.; STEVEN LITZELMAN, CONSTABLE JERSEY SHORE BOROUGH; LARRY PETERMAN, CONSTABLE SHREWBERRY TWP., all in their official and individual capacities

Defendant/Appellee

UNITED STATES THIRD CIRCUIT COURT OF APPEALS

Respondent

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Petition for Writ of Certiorari

Petitioners Scott and Brenda Lawvere, Ambassadors for Christ, hereby apply pursuant to Title 28, § 1254 United States Code and Rule 10 of the Supreme Court Rules of Procedure, for a writ of certiorari to review order of Respondent, United States Court of Appeals, Third Circuit, where on November 14, 1997, Judges issued an order affirming the District Court's decision granting summary judgment to the named Defendants in civil rights case no.97-7215 (D.C. 4:cv 95-1515). In support of their application, Petitioners state:

I. Order and Opinion

On November 14, 1997, Respondents made and entered an Order affirming Summary Judgment for the Defendants. Said Order is attached hereto as **Exhibit S1, pp. 13-14.** Petitioners filed a Petition for Rehearing on November 28,1997 **(Appendix, pp 16-33),** which the Clerk of Court treated as a Rehearing En Banc even though Petitioners never requested an En Banc hearing since it fails to toll the time pursuant to the Rules of the Supreme Court.

II. JURISDICTION

This Court has jurisdiction to hear the Lawvere's petition for writ of certiorari to review a decision issued by the United States Court of Appeals pursuant to U.S.C. 28, § 1254, wherein the judgment rendered by the Court of Appeals conflicts with decisions of other United States Court of Appeals on the same important matter.

III. Constitutional Provisions

Petitioners are seeking writ of certiorari to review the aforementioned decision by the United States Court of Appeals, Third Circuit, as a result of violations of their

Yahweh given rights as secured by including but not limited to:

Where Petitioners were denied due process and access to the Federal District Court as a result of negligence and delay **(Appendix pp 34-35):** Amendment V & XIV states: wherein no person shall be "deprived of life, liberty or property without due process of law."

Where Petitioners were denied a fair hearing and jury trial before Magistrate McRae for an alleged infraction of a homeschool regulation 24 PS § 13-1327, and were denied the right to have access to court files (Cases; NT0000619-94 & NT0000620-94):

Amendment VI states wherein in all criminal prosecutions:

> "the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . " AND Amendment V & XIV wherein it states that no person shall:
>
> "be deprived of life, liberty or property, without due process of law."

Where Principal Schuller filed a private criminal complaint against the Petitioners without approval from the Commonwealth, Rule 106, Pennsylvania Rules of Court, Criminal Procedure **(Appendix pg. 15)** states:

> "When the affiant is not a law enforcement officer and the offense charged includes a misdemeanor or felony . . the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove without unreasonable delay."

Where Petitioners were never duly served service of process by the East Lycoming School District or Robin Schuller, Amendment V & XIV states:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens . . nor shall any State deprive any person of live, liberty or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the law."

Where Petitioners' exercised their God given right, and Defendants interfered in Petitioners' covenant with Yahweh their Creator, to teach their children in the home, denied them access to public information, and were harassed and threatned by the East Lycoming School District, Robin Schuller, and Howard Langdon,

Amendment I States:

> "Wherein Congress shall make no law respecting establishment of religion or free exercise thereof or abridging the freedom of speech or of the press."
>
> AND Amendment VIII: "Excessive bail . . nor excessive fines imposed, nor cruel and unusual punishments inflicted"

Wherein Pennsylvania State Constables and its agents did harass, threaten, and assault Brenda Lawvere and her minor children by pointing a loaded 12 gauge shotgun at them, violated their Fourth Amendment Rights where:

> "The right of the people to be secure in their persons, houses, and effects . . shall not be violated." AND Amendment VIII

Where Pennsylvania State Constables and their agents did arrest Scott Lawvere without warrant, failed to inform him of the reason for arrest and interrogated him without notifying him of his rights under Amendment V & XIV:

> "No person . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law."
>
> "In all criminal prosecutions, the accused shall enjoy the right . . to be informed of the nature and cause of the accusation. . . "

IV. Statement of the Case

On April 30, 1997, Scott & Brenda Lawvere filed their Notice of Appeal of a final decision by Judge Muir from U.S. District Court, Middle District of Pennsylvania, granting the Defendants summary judgment after lengthy litigation **(Appendix pp 1-8).** Said Notice of Appeal was directed to the U.S. Court of Appeals, Third Circuit, Philadelphia, PA.

Lawveres had filed a U.S.C. Title 42, § 1983 claim against the named Defendants for violations of Plaintiffs' constitutionally secured rights. Plaintiffs were seeking redress for violations of their due process rights by District Magistrate McRae; for the assault upon Brenda Lawvere and her children for an alleged "home schooling violation" by a State Constable with a loaded 12 gauge shotgun while other Constables failed to prevent such act; for denial of public information and unlawful criminal prosecution on the same alleged infraction by the East Lycoming School District, Robin Schuller, and Attorney J. Howard Langdon; and for violations of Scott Lawvere's rights during his arrest and detention for the same alleged "home school" infraction.

After more than a year of pleadings and motions, many of which the District Court failed to rule upon, and after setting the case for trial, Judge Muir granted summary judgment even though issues of material fact were in existence. Plaintiffs were hampered during discovery by the Defendants' failure to cooperate to answer interrogatories, produce documents, and the seclusion of at least one witness to avoid deposition.

In his Order of January 29, 1997, Judge Muir stated that there was "no evidence of damages" to the Lawveres even though evidence and discovery on the record showed otherwise. Plaintiffs received only silence from the Court in response to their motions to compel discovery; said motions were summarily dismissed as "moot" when judgment was granted. The Court later issued an order apologizing for not ruling timely on Plaintiffs' motions and pleadings - blame was

placed upon a law clerk who allegedly failed to act in a routine manner under the command of Judge Muir by informing Judge Muir that a years worth of Motions and Pleadings had not been disposed of **(Appendix pp 34-35).**

The Court of Appeals affirmed the District Court's decision granting summary judgment and qualified immunity to the Defendants where District Judge Muir stated there was no evidence of "unconstitutional custom and policy" where Defendant School District and Constables could be held liable for the acts of their employees/agents. **(Appendix pp 1-8).** This despite the fact that depositions, affidavits, interrogatories, and documented evidence on the record showed the Plaintiffs did suffer damage. None of the employed Defendants acted alone, but with the approval of policymakers, superiors, and employers **(Appendix pp 16-33).** District Case # 4:cv 95-1515 was scheduled and placed upon the trial calendar just a few months before Judge Muir granted summary judgment.

In addition, the Plaintiffs believe they were not given equal access to the courts on appeal before the United States Court of Appeals. Appellants Lawvere were denied equal access to the courts: a deprivation they have suffered from the outset of the very first action. As noted on the Court of appeals docket, the Clerk's office gave legal advice to the Defendants who were represented by Attorneys certified to practice before the Court **(Appendix pp 36-43, Docket Aug 16, 1997; Appendix pp 70-73, Declaration).** The Clerk's office also routinely failed to file Appellants' motions in a timely fashion **(R.A. Dated August 16, 1997).** In fact, to date Appellants have submitted: an objection to Defendant Constable's Bill of Costs, Motion for Inclusion, Motion for Mandamus, and Motion for Judicial Determination, **(Appendix pp 56-69, Motions and Pleadings not filed),** which still does not appear upon the docket, **(Appellants pp 44-55, Docket dated Jan. 3, 1998)** which was current as of February 1, 1998.

On December 30, 1997 **(R.A. Order 12/30/97; Appendix pp 12-13),** the Clerk's office altered, certified, and issued a copy of a previously issued Appellate Court Order, dated November 14, 1997 **(R.A. 11/14/97 Order; Appendix pp 10-11).** Defendant Constables Motion for Bill of Costs, Appellants Objection, and Motion for Leave had not been submitted until after the issuance of the November 14, 1997 Order, nor had the pleadings on those issues been adjudicated before the issuance of the altered Order of December 30, 1997.

The certified copy of the altered order bears little resemblance to the Order dated November, 14, 1997.

Based upon the foregoing facts and evidence, Petitioners seek review of the decision(s) by the United States Court of Appeals, Third Circuit.

V. Basis for Federal Jurisdiction

The United States Court of Appeals, Third Circuit had jurisdiction to hear Plaintiffs' Appeal pursuant to U.S.C. Title 29, §1291 and F.R.A.P. Rule 3, Title II, under authority and jurisdiction to hear all final decisions of United States District Courts.

This Court has jurisdiction to issue a Writ of Certiorari under the Constitution for the United States, Article III, and U.S.C. Title 28, § 1254, to review final decisions issued by the United States Court of Appeals when said decision conflicts with decisions of other Courts of Appeal on the same subject mater.

VI. Argument on Issues

On the foregoing facts of the case, the United States Court of Appeals, Third Circuit, rendered a decision affirming U.S. District Judge Muir's decision (Middle District, PA) granting summary judgment to the named Defendants **(see R.A. 6/9/97 Brief).**

The Court was presented with the following points of law:

(1) Whether Plaintiff's claims and the record proved there were genuine issues of material fact that should have been decided at trial.

On the first point of law, wherein the District Court citing Monell stated (and Appellate Court affirmed) that Defendants School District, Schuller and Pennsylvania State Constables did not act pursuant to an unconstitutional custom and policy; hence, Pennsylvania State Constables and the East Lycoming School District could not be held liable for the actions of their employees/ agents and as such were entitled to summary judgment. Said decision conflicts with D.L. Auld Co. v. Chroma Graphics Corp., 714 F.2d 1144 (1983); Bowen v. Watkins, 699 F.2d 979 (1982); Turpin v. Mailet, 619 F.2d 196 (1980); and Kite v. Kelley, 546 F.2d 334 (10th Cir 1976).

As this Court is well aware, Plaintiffs may only have recovered from the Defendants providing their employees/ agents acts were "sanctioned or ordered" pursuant to Monell. Monell v. New York City Dept. of Social Services, 436 U.S. 658, 56 L.Ed. 2d 611, 98 S.Ct. 2018.

It was admitted under deposition that the unconstitutional acts of the Defendants: wherein Robin Schuller on behalf of the School District and its Superintendent pursued and filed criminal complaints without evidence or information against the Plaintiffs in violation of State law and without the State Attorney's approval; and as a result of such act Plaintiff Brenda Lawvere and her minor children were assaulted by Constable Larry Peterman with a 12 gauge shotgun while other Constables looked on and Plaintiff Scott Lawvere was denied due process rights during arrest procedures by Pennsylvania State Constables. These acts were authorized and ordered by the East Lycoming

School District, its Superintendent, and the Pennsylvania State Constables who were and are chief policymakers **(Appendix pp 16-33).**

(2). **Whether the United States District Court, Middle District of Pennsylvania, abuse its discretion to monitor litigation and violated Plaintiffs' rights to have access to the courts, a fair hearing, and trial by jury.**

On foregoing Issue #2, the Appellate Court failed to address or rule on this issue, and it is presumed they agree with the lower Court decision which conflicts with McCray v. Maryland, 456 F.2d 1 (1972). A clerk's duties are ministerial in nature and are "inflexibly mandatory" as any of the clerk's responsibilities. In the Clerk's failure to notify Judge Muir of a year's worth of outstanding motions, Plaintiffs were hampered and their rights to have access to the courts were violated. McCray v. Maryland, supra. Defendants were never held accountable for their failure to respond to Plaintiffs' discovery requests, or for their violations of the Rules of Court, in particular the submission of unsigned pleadings.

Hence, Plaintiffs were held to a much higher standard regarding compliance with the Rules and their rights to due process were violated.

(3) **Whether the District Court abused its discretion by attempting to resolve issues of material fact, since facts on the record conflicted with factual allegations in the court's order granting summary judgment.**

On foregoing Issues #3, the Appellate Court failed to address or rule on these issues and thereby agreed with the action taken by the District Court which conflicts with the Rules of Court and Environmental Defense Fund v. Marsh, 651 F.2d 983 (1981). In the District Court's order granting summary judgment to the Defendants, the Court attempted to resolve issues of material fact in dispute: an act the court is

prevented from taking. Pursuant to F.R.C.P. Rule 56(c) the Court did not base its final decision upon the pleadings, depositions, answers to interrogatories, admissions, affidavits and evidence.

In fact, at the time summary judgment was granted, the Defendants had still not submitted interrogatories under oath, nor produced all the documents requested in discovery; hence, Petitioners were once again denied due process.

(4) **Whether the District Court abused its discretion by not compelling the Defendants to comply with Plaintiffs' discovery requests thus violating Plaintiffs' rights to due process.**

In foregoing Issue #4, the Appellate Court failed to address or rule on these issues and it is thereby presumed they agreed with the same in conflict with Williams v. Wood, 612 F.2d 982 (1980).

Compounding this issue was the fact that the clerk had failed to notify Judge Muir of outstanding motions to compel discovery (see (2) above). In so doing, the clerk violated Plaintiffs rights to have access to the courts. McCray, Williams, supra. Plaintiffs believe that it was not just a clerk, but the court's own responsibility to insure that the case was adjudicated on its merits to "ensure just, speedy and inexpensive resolutions." In the Civil Justice Expense and Delay Reduction Plan, U.S.C. Title 28, § 471, Ch. 23, Congress intended that each District Court would "monitor discovery, improve litigation management" and ensure justice. It is apparent that due to unjustifiable delays and negligence on the part of a clerk, Plaintiffs were denied due process of law and the court abused its discretion.

(5) **Whether the District Court erred in applying a legal concept in granting the Defendants immunity even though they acted under color of law and violated Plaintiffs' substantive rights.**

On Issue #5, The District Court in ordering summary judgment, granted the Defendants immunity and the Court of Appeals affirmed in conflict with Allred v. Svarczkopf, 573 F.2d 1146 (1978). The District Court never considered when coming to its final decision, whether the named Defendants were duly pursuing their duties under State statute without violating Plaintiffs' rights. In discussing the standards to determine immunity, the Court stated that the "doctrine of immunity" involves a balancing act between the rights of an individual and public officials needs. The Court must determine whether the public official carried out those duties within the scope of his office. Allred, supra. In affirming the District Court's decision, the Court of Appeals failed to discuss those standards to examine the statutes, no determination was made if the Defendants were duly exercising the authority of office and did not violate Plaintiffs' rights.

During litigation, the U.S. Court of Appeals was also presented with the following point of law in question:

Does the Clerk of the Court of Appeals have legislative or judicial authority to give out legal advice, make judicial decisions on pleadings, and to refuse to file Plaintiffs' pleadings and motions. These questions were posed to the Court of Appeals in a Motion for Judicial Determination upon which the Court failed to rule and it was therefore presumed they agreed with the Clerk's acts.

The Clerk of Court, without order from the Court of Appeals in violation of F.R.A.P. Rule 27, Rule 45, and L.A.R. Rule 27.6, ruled on Petitioners motions, gave legal advice, and denied Petitioners a fair hearing; hence violating Petitioners' rights to due process.

VII. Statement of Relief

Petitioners seek to have the Supreme court review on writ of certiorari the above mentioned order affirming

summary judgment to the named Defendants and enter judgment declaring that the respondent made an erroneous judgment in entering the order that conflicts with decisions of other United States Court of Appeals on the same subject matter and that such order is void and unenforceable. Petitioners also seek judgment stating that decisions made by other United State Court of Appeals are correct and should be approved by this Court as the controlling law, AND parties should be allowed the opportunity to have a fair and impartial hearing as well as to proceed to trial before a jury of their peers.

VIII. Reason Why Writ Should Issue

The reasons a writ or certiorari should issue herein are that:

A writ of certiorari is the only remedy available to Petitioners Lawvere to obtain a review of the order issued by Judges Cowen, Stapleton, and Lewis of the U.S. Court of Appeals, Third Circuit, where said order conflicts with decisions made by other United States Court of Appeals on the same subject matter, and to obtain a judgment declaring that order be voided and order the Respondent to grant Petitioners a fair and full hearing and to remand the action back before an impartial Judge in U.S. District Court, Middle District of Pennsylvania, for trial.

Wherefore, Petitioners Scott and Brenda Lawvere request that the Supreme Court review order of the United States Court of Appeals dated on November 14, 1997, affirming the decision by the U.S. District Court, Middle District, granting summary judgment and qualified immunity to the named Defendants in the case of Lawveres vs. East Lycoming School District, et al, Case no. 97-7215 (D.C. 4: cv 95-1515). Petitioners request an order on writ of certiorari to issue to the Respondent, the United States Court of Appeals for the Third Circuit, commanding the Respondent to set

aside and annul the order referred to and rehear the evidence and pleadings presented, in the case of Lawvere v. East Lycoming School District, et al, and remand the action back to District Court before an impartial tribunal so that it may proceed to trial and grant Petitioners any other relief the court deems just and proper.

Respectfully submitted,
Scott & Brenda Lawvere, Ambassadors for Christ, Petitioners

Scott and Brenda Lawvere
Ambassadors for Christ
c/o P.O. Box 46,
Unityville, Penn. 17774,
(717)458-4522

CERTIFICATE OF SERVICE

We, Scott and Brenda Lawvere, Ambassadors for Christ, do hereby certify that the foregoing Petition for Writ of Certiorari was sent U.S. Mail, postage prepaid, to Defendants' Attorneys at the following addresses: East Lycoming School District, Robin Schuller, c/o Anthony Sherr, Sherr Joffee & Zuckerman, Esq., 200 Four Falls Corp. Ctr., P.O. Box 800, Suite 400, West Conshohocken, Pa. 19428, (610)941-5400; Pennsylvania State Constables, Gurn Weber, Larry Peterman, and Steven Litzelman, c/o J. David Smith, McCormick, Reader, Nichols, Esq., 835 W. 4th St., Williamsport, Pa. 17703, (717)326-5131; J. Howard Langdon, c/o. Edward Monsky, Fine Wyatt & Carey, 425 Spruce St., Scranton, Pa. 1805, (717)343-1197; C. Roger McRae, c/o Maryellen Gallagher, 1515 Market St., Suite 1414, Phil., Pa. 19102(215)560-6300

Done this 12 day of February, 1998.
Respectfully Submitted,
Scott & Brenda Lawvere, Ambassadors for Christ, Petitioners

Scott and Brenda Lawvere
Ambassadors for Christ
c/o P.O. Box 46
Unityville, Penn. 17774
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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 97-7215

MR. AND MRS. SCOTT LAWVERE

v.

THE EAST LYCOMING SCHOOL DISTRICT; ROBIN SCHULLER, Principal; J. HOWARD LANGDON, Attorney; C. ROGER McRAE, District Magistrate, all in their official and individual capacities; LARRY PETERMAN, Office of Constable, Schrewberry Twp.; STEVEN LITZELMAN, Office of Constable, Jersey Shore Borough; GURN WEBER, Office of Constable Old Lycoming Twp.

Mr. and Mrs. Scott Lawvere,
Ambassadors for Christ,
Appellants

On Appeal From the United States District Court For the Middle District of Pennsylvania
(D.D. Civil Action No. 95-cv-1515)
District Judge: Honorable Malcom Muir

Submitted October 16, 1997

BEFORE: STAPLETON, COWEN and LEWIS,
Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellants, it is ORDERED AND ADJUDGED that the judgment of the district court entered March 19, 1997, be and is hereby affirmed.

Exhibit S1

Costs taxed against appellants.

By the court,

Walter K Stapleton
Circuit Judge

Attest:
Patricia Cohen
Acting Clerk

Dated: November 14, 1997

Exhibit S1

UNITED STATES SUPREME COURT
WASHINGTON, D. C.
October Term, 1997

In Re: Lawvere vs.
East Lycoming School District, et al.
Appellate Court Case No: 97-7215

Scott and Brenda Lawvere, Ambassadors for Christ
Petitioners

vs.

THE UNITED STATES COURT OF APPEALS,
THIRD CIRCUIT, PHILADELPHIA, PA
Respondent

APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SCOTT LAWVERE AND BRENDA LAWVERE, : No. 4:CV-95-1515

Plaintiffs : Complaint filed 9/8/95

vs. : (Judge Muir)

THE EAST LYCOMING SCHOOL DISTRICT, et al., :

Defendants :

ORDER
January 29, 1997

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On September 8, 1995, Plaintiffs Scott and Brenda Lawvere filed this civil rights action pursuant to 42 U.S.C s. 1983 and 28 U.S.C. ss 1331 and 1343(a). The remaining Defendants in this action are a party referred to in the Lawvere's complaint as "the Pennsylvania State Constables" (hereinafter "the Constables"), the East Lycoming School District, and Robin Schuller. The Lawveres are proceeding pro se.

In their original complaint, the Lawveres allege that their constitutional rights were violated by the Defendants during state criminal proceedings against them relating to the Lawveres' refusal to enroll their children in public school. The Lawveres aver that the Constables harassed, and threatened, and assaulted Brenda Lawvere and arrested Scott Lawvere without informing him of the reason for his arrest or

informing him of his constitutional rights. The Lawveres seek damages in the amount of $50,000 from the Constables and "such sanctions as this Court deems appropriate."

The Lawveres further allege that both Schuller and the School District violated their right to practice religion as guaranteed by the First Amendment to the United States constitution as well as the Lawveres' "right of access to public information." The Lawveres contend that the School district violated their right to due process as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

On May 31, 1996, the Defendants filed a motion for summary judgment. On June 5, 1996, the Defendants filed a brief in support thereof and a statement of material facts. On July 16, 1996, pursuant to an extension of time, the Lawveres filed a brief in opposition and a counterstatement of material facts. No reply brief was filed and the time for doing so expired July 30, 1996. By reason of a recordkeeping error by the law clerk, this matter was overlooked until the Clerk's office issued its list of pending motions.

In their statement of material facts, the Defendants assert, and the Lawveres do not deny, the following facts which are pertinent to the Constables' summary judgment motion:

1. Defendant Robin Schuller, principal of the East Lycoming School District, instituted a private criminal complaint in the Court of District Justice C. Roger McRae based on the Lawveres' alleged violation of compulsory school attendance provisions of the Pennsylvania Public School Code.

2. The Lawveres reside within the geographic boundaries of the East Lycoming School District.

3. The Lawveres have children between the ages of 8 and 17.

4. The Lawveres have not enrolled their children in the public schools of the East Lycoming School District.

5. The Lawveres have not conducted a home-schooling program in conformance with the compulsory school education statute.

6. Schuller, who was then the principal of the Renn Elementary School, sent a letter to the Lawveres on or about September 15, 1994, informing them that they were not in compliance with the compulsory school attendance laws. Schuller informed the Lawveres that their children were required to enroll in school or that the Lawveres were required to comply with state board of education regulations regarding home instruction. The letter further indicated that the matter would be referred to a magistrate if the Lawveres did not comply with the regulations.

7. On or about September 26, 1994, Scott Lawvere met with the Superintendent of the East Lycoming School District, Edward W. Harrington, and discussed the home-schooling program.

8. On or about October 5, 194, the Lawveres sent correspondence to Superintendent Harrington summarizing their religious beliefs which they felt prevented them from complying with the compulsory school attendance statute.

9. On or about October 6, 1994, Schuller was the affiant/complainant in a summary criminal complaint filed with District Justice C. Roger McRae alleging that the Lawveres had violated the compulsory school attendance law.

10. On or about October 11, 1994, District Justice McRae mailed a notice of hearing on the complaint.

11. On or about October 19, 1994, the Lawveres filed a "Motion to Dismiss and Petition for Removal"

12. On December 4, 1994, following a hearing which the Lawveres attended, District Justice McRae found the Lawveres guilty of violating the compulsory school attendance provisions of the Pennsylvania Public School Code.

13. No appeal was taken from this determination.

14. District Justice McRae issued a warrant for the arrest of Scott Lawvere on May 4, 1995.

15. On May 19, 1995, Constables Gurn Weber, Steve Litzelman, and Larry Peterman, and Robert Cunningham executed the arrest warrant for Scott Lawvere.

16. On that date, the Constables, in uniform, arrived at the Lawveres' residence and asked Brenda Lawvere where Scott Lawvere could be found

17. On the same date, the Constables arrested Scott Lawvere at his place of employment.

18. While arresting Scott Lawvere, the Constables did not show him the arrest warrant and did the Constables did not read Scott Lawvere his Miranda rights.

Summary judgment is appropriate only when there is no genuine issue of material fact which is unresolved and the moving party is entitled to a judgment as a matter of law. Fed.R.Civ.p. 56(c). Summary judgment is an extreme remedy and should not be granted when there is a disagreement about the facts or the proper inferences which a factfinder could draw from them. Peterson vs. Lehigh Valley Dist. council, 676 F.2d 81, 84 (3d Cir. 1982). "When a motion for summary judgment is made and supported as provided in . . .[Rule 56], "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading . . ." Fed.R.Civ.P. 56(e). The adverse party must show by affidavits, pleadings, depositions, answers to interrogatories, and admissions on file, that there is a genuine issue for trial. Id. Because summary judgment is a severe remedy, the Court should resolve any doubt about the existence of genuine issues of fact against the moving party. Ness vs. Marshall, 660, F.2d 517, 519 (3rd Cir. 1981).

The United States Supreme Court has stated that in motions for summary judgment a material fact is one which might affect the outcome of the suit under relevant substantive law. See Anderson vs. Liberty Lobby, Inc., 477 U.S. 242 (1986). The Supreme Court also stated in Anderson that a dispute about a material fact is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. at 248. "Where the record

taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no "genuine issue for Trial." Matsushita Electric Industrial Company. Ltd. vs. Zenith Radio Corporation, 475 U.S. 574, 587 (1986).

Initially, the moving party has a burden of demonstrating the absence of a genuine issue of a material fact. Celotex Corporation vs. Catrett, 477 U.S. 317, 323 (1986). This may be met by the moving party pointing out to the court that there is an absence of evidence to support an essential element as to which the non-moving party will bear the burden of proof at trial. Id. at 325. The non-moving party then must make a sufficient showing as to the essential elements of his or her case that a reasonable jury could find in his or her favor. Id. at 322-23.

In light of these principles, we will consider the Defendants' motion for summary judgment.

We will first address the Lawveres' claims against the School District Liability of a governmental agency under 42 U.S.C. s 1983 "may not be proven under the respondeat superior doctrine, but must be founded upon evidence that the unit itself supported a violation of constitutional rights" Bielevicz vs. Dubinon, 915, F.2d 845, 850 (3d Cir. 1990). A plaintiff must show that the governmental entity maintains an unlawful policy or custom and that such policy or custom was the proximate cause of the plaintiff's injuries. Monell vs. New York City Department of Social Services, 436 U.S. 658 (1978); Bielevicz, 915 F.2d at 850. The United States Supreme Court has stated that :

> [a] single incident of unconstitutional activity is not sufficient to impose liability . . . unless proof of the incident includes proof that it was caused by an existing, Unconstitutional municipal policy which policy can be attributed to a municipal policy maker.

Oklahoma City vs. Tuttle, 471 U.S. 808, 823-24 (1985).

The Lawveres cite no evidence that the actions of the School District were carried out pursuant to an unconstitutional policy or custom and we are aware of none.

consequently, we will grant the Defendants' motion for summary judgment as to all of the Lawveres' claims against the School District.

Count III of the Lawveres' complaint alleges that Schuller violated the Lawveres' "right to public information." This is the only count in the Lawveres' complaint which pertains to Schuller.

The Pennsylvania School Code provides that every school-aged child must attend a day school. 24 Pa.C.S.A. s13-1327(a). "Compulsory school age" is defined as the period in a child's life from the time the child's parents elect to have the child enter school, not later than at the age of eight years, until the age of 17 years. 24 Pa.C.S.A. s 13-1326. The parents of children who are of compulsory school age are required to send such children to a day school. 24 Pa.C.S.A. s 13-1327(a). Parents may enroll their children in a school operated by a church or religious body, 23 Pa.C.S.A. s 13-1327(b), or conduct a home-schooling program subject to certain regulatory requirements, 24 Pa.C.S.A. ss 13-1327(d), 13-1327.1. The Pennsylvania School Code also mandates that school district employees enforce the attendance provisions of the Code. 24 Pa.C.S.A. ss 13-1354, 13-1355.

The compulsory attendance provisions of the Pennsylvania School Code do not interfere with the First Amendment right to practice religion. Jeffery vs. O'Donnell, 702 F.Supp. 516, 518 (M.D. Pa. 1988) (Kosik,J.). The Lawveres do not cite any evidence that Schuller's actions deviated in any way from the requirements of the Pennsylvania School Code. Consequently, we will grant Schuller's motion for summary judgment as to the Lawveres' claim that Schuller violated the Lawveres' First Amendment right to practice their religion.

The Lawveres further assert that Schuller violated their "right of access to public information as secured by the First Amendment of the Bill of Rights." The Lawveres cite no authority which defines such a right within the scope of the First Amendment to the United States Constitution and we

are aware of none. The Lawveres most likely are seeking relief under Pennsylvania's "right to know" law, 65 Pa.C.S.A. s66.1, et seq. The Plaintiffs, however may not recover under 42 U.S.C. s1983 based upon an alleged violation of a state statute. Shaw by Strain vs. Strackhouse, 920 F.2d 1135, 1141-42 (3d Cir. 1990). Moreover, a plaintiff may not recover damages based upon a violation of Pennsylvania's "right to know" law. 65 Pa.C.S.A. s66.4; Wiley vs. Woods, 141 A.2d 844 (Pa. 1958). We will therefore grant Schuller's motion for summary judgment as to the Lawveres' claim based upon Schuller's alleged "right to public information."

Count VI of the Lawveres' complaint asserts the Lawveres' claims against the Constables. These claims are based upon allegations that the Constables harassed, threatened, and assaulted Brenda Lawvere and Arrested Scott Lawvere without informing him of the reason therefor or informing him of his constitutional rights. As stated earlier, liability of a governmental agency under 42 U.S.C. s 1983 "may not be proven under the respondeat superior doctrine, but must be founded upon evidence that the unit itself supported a violation of constitutional rights." Bielevicz, 915 F.2d at 850. A plaintiff must show that the governmental entity maintains an "unlawful policy or custom and that such policy or custom was the proximate cause of the plaintiff's injuries. Monell., 436 U.S. at 658; Bielevicz, 915 F.2d at 850.

The Lawveres make no assertion that the actions of the Constables were carried out pursuant to an unconstitutional policy or custom and we are aware of none. consequently, we will grant the Constables' motion for summary judgment.

On July 31, 1996, the Lawveres filed an "amended complaint" without first seeking leave of Court to do so. Because the proposed amended complaint was filed more than 20 days after the service of the Lawveres' original complaint and because responsive pleadings to the Lawveres' original complaint have been filed, the Lawveres could only amend

their complaint pursuant to leave of Court. Fed.R.Civ.P. 15(a).

Moreover, the Lawveres' amended complaint merely restates the claims set forth in their original complaint as to the East Lycoming School District and Robin Schuller. The Lawveres' amended complaint sets forth claims against the Constables which do not differ in substance from the claims set forth in the original complaint but which allege misconduct by individual Constables. The Lawveres, however, point to no evidence on the record that the Constables used force against Brenda Lawvere and we are aware of none. Furthermore, failure by police to issue Miranda warnings is not actionable under 42 U.S.C. s 1983. Warner vs. City of Lincoln, 864 F.2d 1436, 1442 (8th Cir. 1989); Cooper vs. Dupnik, 924 F.2d 1520, 1529 (9th Cir. 1991); Bennett vs. Passaic, 554 F.2d 1260, 1263 (10th Cir. 1976).

Because the Lawveres did not seek leave to amend their complaint and because the amended complaint would not survive the Defendants' motion for summary judgment or dismissal, we will strike their amended complaint from the record.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The Lawveres' amended complaint is stricken from the record.

2. The Defendants' motion for summary judgment is granted.

3. The Clerk of Court shall enter judgment in favor of the Defendants and against the Lawveres no earlier than two weeks from today so as not to prejudice any person or persons who may wish to file a motion or motions prior to entry of judgment.

Muir, U.S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 97-7215

SCOTT AND BRENDA LAWVERE

v.

EAST LYCOMING SCHOOL DISTRICT, ET AL.

SUR PETITION FOR REHEARING

BEFORE: SLOVITER, Chief Judge, BECKER, STAPLETON, MANSMANN, GREENSBERG, SCIRIICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS, McKEE and RENDELL, Circuit Judges

The petition for rehearing filed by appellants in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,

Walter K. Stapleton
Circuit Judge

Dated : Dec 22 1997

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 97-7215

MR. AND MRS. SCOTT LAWVERE

v.

THE EAST LYCOMING SCHOOL DISTRICT; ROBIN SCHULLER, Principal; J. HOWARD LANGDON, Attorney; C. ROGER McRAE, District Magistrate, all in their official and individual capacities; LARRY PETERMAN, Office of Constable, Schrewberry Twp.; STEVEN LITZELMAN, Office of Constable, Jersey Shore Borough; GURN WEBER, Office of Constable Old Lycoming Twp.

Mr. and Mrs. Scott Lawvere,
Ambassadors for Christ,
Appellants

On Appeal From the United States District Court For the Middle District of Pennsylvania
(D.D. Civil Action No. 95-cv-1515)
District Judge: Honorable Malcom Muir

Submitted October 16, 1997

BEFORE: STAPLETON, COWEN and LEWIS,
Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellants, it is

ORDERED AND ADJUDGED that the judgment of the district court entered March 19, 1997, be and is hereby affirmed.

Costs taxed against appellants.

By the court,

Walter K Stapleton
Circuit Judge

Attest:
Patricia Cohen
Acting Clerk

Dated: November 14, 1997

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 97-7215

MR. AND MRS. SCOTT LAWVERE

v.

THE EAST LYCOMING SCHOOL DISTRICT; ROBIN SCHULLER, Principal; J. HOWARD LANGDON, Attorney; C. ROGER McRAE, District Magistrate, all in their official and individual capacities; LARRY PETERMAN, Office of Constable, Shrewberry Twp.; STEVEN LITZELMAN, Office of Constable, Jersey Shore Borough; GURN WEBER, Office of Constable Old Lycoming Twp.

Mr. and Mrs. Scott Lawvere,
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District Judge: Honorable Malcom Muir

Submitted October 16, 1997

BEFORE: STAPLETON, COWEN and LEWIS,
Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellants, it is

ORDERED AND ADJUDGED that the judgment of the district court entered March 19, 1997, be and is hereby affirmed.

Costs taxed against appellants.

By the court,

Walter K Stapleton
Circuit Judge

Attest:
Patricia Cohen
Acting Clerk

Dated: November 14, 1997

Costs Taxed In Favor of Appellees Pennsylvania State Constables, Larry Peterman, Steven Litzelman and Gurn Weber as follows;

Brief. $119.00
TOTAL $119.00

Certified as a true copy and issued in lieu of a formal mandate on 12/30/97
Teste: P. Douglas Sisk
Clerk, U.S. Court of Appeals for the Third Circuit.

CONSTITUTIONAL PROVISIONS AND STATUTES

Amendment I - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment IV - The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI - In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defense.

Amendment VIII - Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV para 1 - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Pennsylvania Rules of Court, Criminal Rule 106 - (a) When the affiant is not a law enforcement officer, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay.

(b) If the Attorney for the Commonwealth:

(1) approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority;

(2) disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter, the affiant may petition the court of common pleas for review of the decision.

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
PHILADELPHIA, PA

Appeal No: 97-7215
Case No: 4:CV-95-1515

SCOTT AND BRENDA LAWVERE,
Ambassadors for Christ, **Appellants**

vs.

EAST LYCOMING SCHOOL DISTRICT
PRINCIPAL ROBIN SCHULLER
PENNSYLVANIA STATE CONSTABLES
CONSTABLE GURN WEBER
CONSTABLE LARRY PETERMAN
CONSTABLE STEVEN LITZELMAN
DISTRICT MAGISTRATE McRAE, AND
ATTORNEY HOWARD LANGDON,
In their official and individual capacities,

Appellees

APPELLANTS' PETITION FOR REHEARING

This is a Petition for Rehearing of a final order from the Third Circuit Court of Appeals, dated November 14, 1997 affirming the lower court's final order in favor of the defendants/appellees issued by Federal District Judge Malcom Muir Middle District of Pennsylvania

Prepared and Filed By: Scott and Brenda Lawvere,
Appellants, Pro Se ,Ambassadors for Christ
P.O. Box 46, Unityville, PA 17774,(717)-458-4522

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SUMMARY OF ARGUMENT

Plaintiffs brief will show that the U.S. District Court of Appeals overlooked the following facts and evidence on record, to wit:

Robin Schuller, Principal employed by the East Lycoming School District did not act alone in filing a private criminal complaint against the Plaintiffs. Schuller was authorized by the East Lycoming School District and School Superintendent Edward Harrington to file criminal charges against the Plaintiffs without evidence or personal knowledge of an infraction or wrongdoing.

Since Schuller acted with authorization and approval of the School District's policymakers, she and they are liable to the Plaintiffs for deprivation of rights. The same applies to the Pennsylvania State Constables.

Defendant Pennsylvania State Constables, a "defacto" municipal corporation was created by Captain Gurn Weber using the collective powers of his office and that of other Constables. As creator, he is the policymaker of the Pennsylvania State Constables; as supervisor he is responsible for the actions of the Constables under his immediate supervision. Captain Weber also failed to properly supervise and train Constable Litzelman and Peterman in procedures when making an arrest with and without a warrant as evidenced by the deprivations suffered by the Lawvere family.

District Justice McRae, relying upon his own discretion and acting outside the scope of his office, did deny and violate Plaintiffs' rights to due process of law.

All of the named Defendants made conscious decisions to take a course of conduct from alternative choices and in taking action, violated the Lawvere family's rights.

ARGUMENT

I. DOES THE EAST LYCOMING SCHOOL DISTRICT BEAR MUNICIPAL LIABILITY FOR ACTIONS OF ROBIN SCHULLER?

Plaintiffs incorporate herein by reference their Initial Appeal Brief.

1. In affirming the judgment of the U.S. District Court of the Middle District, the Third Circuit Court of Appeals has agreed that the East Lycoming School District had no responsibility for the actions of Defendant Robin Schuller, even though evidence on the record shows otherwise.

   Citing Monell, District Judge Muir argued that the Plaintiffs "cited no evidence" that the actions of the East Lycoming School District "Were carried out pursuant to an unconstitutional policy and custom", hence East Lycoming School District could not be responsible even though pursuant to testimony of School Board President Jane DeWire and School Superintendent Harrington, the East Lycoming School District had knowledge of and approved the filing of a private criminal complaint against the Lawveres by Schuller.

2. The precedent of "official policy" in Monell was to separate acts of employees from their municipal employers. As a result of Monell, Plaintiffs may only recover from the Defendants providing Schuller's acts were "sanctioned or ordered." Monell v. New York City Department of Social Services, 436 U.S. 658, 56 L.Ed.2d 611, 98 S.Ct. 2018.

   Robin Schuller, Principal of Renn Elementary School filed a private criminal complaint against Scott

and Brenda Lawvere on October 6, 1994 **(N.T. Schuller, page 6, lines 4-12)**; *she did not act alone*. Schuller conferred with Superintendent Harrington who authorized the filing of the complaint **(N.T. Schuller, p.8, lines 2-9; N.T. Harrington p. 18, lines 15-20)**. When Schuller filed the private criminal complaint, she admittedly had no evidence of violation **(N.T. Schuller, p. 14, lines 13-15)**. According to Superintendent Harrington, Principals have no authority to file private criminal complaint without evidence **(N.T. Harrington, p. 9, lines 11-13 and 23).**

Therefore, based upon their own testimony, Harrington, Schuller and the East Lycoming School District violated their own policies and created a new set of policies.

3. The East Lycoming School District is liable for single decisions made by Superintendent Harrington. Every "act" taken by Harrington and East Lycoming School District constituted official policy. Owen v. City of Independence, 445 U.S. 622, 63 L.Ed.2d 673, 100 S.Ct. 1398 (1980), even if that policy is used only once or more than once.

4. Harrington, as Superintendent is responsible for the day. to day operations of the East Lycoming School District **(N.T. Harrington, p. 6 lines 2-3 and lines 16-17)**. He directs the administration that implements school board policy **(N.T. Harrington, p. 8, lines 14-16)**. Therefore, he is the chief decision/policymaker for the East Lycoming School District.

5. East Lycoming School District and Harrington recommended and authorized Schuller's filing the criminal complaint without the District Attorney's approval in violation of State law. Harrington, although having the final say, did not act alone in his selection of

"choices and decisions." Bowen v. Watkins, 669 F.2d 979 (1982). **(N.T. Harrington p. 24, lines 12-23)**[1] . **(N.T. Harrington, p. 16, lines 20-25; p. 17, lines 1-6)**[2]

East Lycoming School District and Harrington are liable for violations of Plaintiffs civil rights since they made

a "deliberate choice to follow a course of action" from alternatives because they are responsible for establishing final school policy regarding school attendance and decisions to take legal action against those allegedly not in compliance. Pembaur v. Cincinnati, 475 U.S. 469, 89 L.Ed.2d 452, 106 S.Ct. 1292. **(N.T. DeWire, p. 15, lines 3-7)**.

6. According to State law, private criminal complaints must accompany evidence and be given to the District Attorney's office for approval before he can begin to prosecute the case. Pennsylvania Rules of Court, Criminal Procedure, Rule 133. A complaint must accompany facts and evidence to give a District Attorney sufficient information to make a decision whether or not to permit criminal proceedings. Corn v. Muroski, A.2d 1312, 352 Pa.Super 15, Super 1986.

It would have been the District Attorney's responsibility to decide whether or not to prosecute. The decision to proceed to prosecute did not belong to the School District, Mr. Harrington, or Robin Schuller. In fact, the School District and Harrington waived any rights they may have had to bring an action for alleged

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[1] "East Lycoming School District approves all legal actions."

[2] East Lycoming School Board "does not have authority" to make "determinations" regarding evidence; only the Superintendent of Schools.

violation because they violated State law and failed to get the District Attorney's approval. Pokrandt v. Shields, E.D. Pa 1991, 773 F.Supp 758.

As a result of the actions of Robin Schuller, Edward Harrington, and the School District, Plaintiffs rights including but not limited to their rights to due process were violated, without any tangible evidence of wrongdoing. Thus in one act, East Lycoming School District and Edward Harrington as ultimate policymakers are responsible for actions of Robin Schuller, who did not act alone when they violated Plaintiffs rights to due process and right to have equal access to the courts.

Summary judgment should not have been granted since the East Lycoming School District, Harrington, and Schuller acted in concert to deprive Plaintiffs of their rights. Plaintiffs should have been given the opportunity to have a fair hearing and to present the facts surrounding the criminal complaint before a jury of their peers.

II. DID PRINCIPAL ROBIN SCHULLER VIOLATE PLAINTIFFS' RIGHTS INCLUDING BUT NOT LIMITED TO DUE PROCESS?

7. It is impossible for the Lawveres to have violated the Pennsylvania School Code unless they had also violated the regulation implementing the School Code.

Defendant Schuller admitted she depended upon "knowledge of school attendance" and "what is expected of policy and the Pennsylvania School Code" in filing a private criminal complaint.**(N.T. Schuller, p. 17 lines 15-19).** Yet, the East Lycoming School District does not have a policy for teaching children at home according to School Superintendent Harrington. **(N.T. Harrington, p. 26 lines 6&7, 10-11).**

8. Harrington testified that his only "motivation" in compelling Schuller to file was to "insure school district and staff were in "compliance" with compulsory education laws or home schooling regulations." **(N.T. Harrington, p. 56, lines 4-10** [emphasis added]

According to regulations implementing 24 Pa.C.S.A. 13-1327, there are no provisions concerning compulsory attendance of home schoolers, nor are there any criminal provisions for alleged school absence. In regards to 24 Pa.C.S.A. 13-1327, there are no implemented rules or regulations concerning home schoolers or any fine or penalty for alleged absence by either homeschoolers or children enrolled in district schools. Therefore, Plaintiffs could not have violated 24 Pa.C.S.A. 13-1327 since they did not violate the regulation. United States v. Reinis, 794, F.2d 506, 508 (9th cir 1986); United States v. Murphy, 809 F.2d 1427, (9th cir 1987). **[See Appendix Item #60 Plaintiffs Objection to Summary Judgment & #62 Motion for Rehearing]**.

Acting with the full knowledge and approval of the East Lycoming School District, Superintendent Harrington and Principal Robin Schuller interfered with and violated Plaintiffs' rights, including but not limited to their right to due process, the right to be free from harassment and frivolous litigation, the right to teach their children, as well as their right to worship their Creator which includes following his laws and commandments.

The Defendants are liable to the Plaintiffs for their willful, unlawful acts. As a result of decisions and conscious "choices", Brenda Lawvere and her children were assaulted by Constables, and the Lawvere family suffered numerous rights deprivations.

Summary judgment should not have been granted since genuine issues of material fact were in existence; the Lawveres should have been allowed to proceed to trial.

III. IS MUNICIPAL ENTITY PENNSYLVANIA STATE CONSTABLES' LIABLE FOR THE ACTS AND FAILURE TO ACT OF INDIVIDUAL CONSTABLES?

A. Municipal Corporation "Pennsylvania State Constables

9. "Municipal policy" is a manner in which liability can be "traced back" to policymakers. A single act by a "high level officer can be municipal policy . . if that officer is placed highly enough to be an authorized decision maker."Williams v. City of Chicago, 658 F.Supp 147 (N.D.Ill 1987).

10. Captain Gurn Weber, Constable of Old Lycoming Township, used his powers of office and created a "de facto" municipal corporation known as "Pennsylvania State Constables". **(See exhibits; Pictures of Marquee; Excerpts from Phone Book Exhibit #30, p. 162 Exhibits)**.

This single decision to create "Pennsylvania State Constables" using the collective powers of the individual Constables was without legislative authority.

11. Act 147-1990, Laws of Pennsylvania creating the Office of Constable was repealed by the Supreme Court of Pennsylvania as "unconstitutional". In re Act 147 of 1990, 598 A.2d 985 (Pa. 1991). Upon repeal, the legislators of the Commonwealth neglected to re-enact new legislation and implement new regulations providing for responsibilities, duties, and enforcement authority of

state constables. As a result, the office of constables in the Commonwealth is a "de facto" office. Therefore, when Captain Weber created "Pennsylvania State Constables", he did so upon his own prerogative.

12. Weber employs a staff and acts as immediate supervisor of Constables within Lycoming County. **(N.T. Litzelman, p. 12 lines 19-23; p. 4, lines 12-13).**

Pursuant to government offices in Harrisburg, Constables do not report to any "agency" or "department of government". But, pursuant to Constable Litzelman, Mr. Weber is responsible for the proper supervision of Constables within the County.

13. Before a municipal corporation can be created, officers/creators must file a charter and articles of incorporation with the Secretary of the Commonwealth. Certificates of Incorporation issued by the Secretary of the Commonwealth is "conclusive evidence" that the municipal corporation exists. Upper Dublin Township Authority v. Piszek, 420 Pa. 536, 218 A.2d 331. Yet when Plaintiffs contacted the Secretary's office, no record was found of any municipal corporation known as "Pennsylvania State Constables." The only evidence that it does exist are the photographs that the Plaintiffs have presented into evidence.

B. Assault by Constable Peterman and Constables failure to Act

14. On May 19, 1997, Captain Weber and Constables Litzelman, Peterman, and Cunningham arrived at the Plaintiffs' house as representatives of "Pennsylvania State Constables". When Constable Peterman assaulted Brenda Lawvere and her children with a loaded 12 gauge shotgun, Captain Weber "acquiesced" in Plaintiffs constitutional deprivations. As chief policymaker, he and

the "Pennsylvania State Constables" are liable for those deprivations. Kite v. Kelley, 546 F.2d 334, (10th Cir. 1976). Turpin v. Mailet, 619 F,2d 196 (1980). **(N.T. Litzelman, p. 16 lines 20-p. 17 line 2).**

15. Litzelman, a non-supervisory officer, neglected his duty to enforce the law and violated his oath of office when he failed to stop Constable Peterman from assaulting Brenda Lawvere and her children with the loaded 12 gauge shotgun. Wilkinson v. Ellis, 484 F.Supp 1072, 1086 (E.D.Pa. 1980).

16. Peterman's assault and misconduct during performance of his duties is actionable and proper under 42 U.S.C. 1983. Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 496 (1961). Weber, Litzelman, and Pennsylvania State Constables are liable for Peterman's assault as a result of "inaction" and "indifference".

There are no professional or educational requirements to become elected to the position of Constable. Although Constables do attend firearms classes, there seems to be no formal instruction regarding procedure. Even Constable Litzelman was unsure of the training requirements of Constables. **(N.T. Litzelman, p. 10 lines 1-page 11, line 2).**

Constable Weber as chief policymaker for "Pennsylvania State Constables" and supervisor of individual Constables had the responsibility to properly inform, train, and supervise the Constables under his supervision and failed to do so.

As a result of Peterman's actions and Constables failure to act, Brenda Lawvere and her children were assaulted and their rights were violated. Pennsylvania State Constables, and the individual Constables are liable to Brenda Lawvere and her children for those rights deprivations.

C. Arrest and Interrogation of Plaintiff Scott Lawvere

17. Constable Weber, when taking Scott Lawvere into custody failed to notify him of the reason for his arrest, failed to read and notify him of his Miranda rights before interrogating him, and failed to show him a copy of the alleged warrant for his arrest. **(Affidavit:Scott Lawvere)**. Constable Litzelman, a trained police officer who also was a Constable, assisted in the arrest of Scott Lawvere, yet had no idea whether or not he was required to notify him of his Miranda rights. **(N.T. Litzelman, p. 25, lines 10-14).**

Captain Weber violated Scott Lawvere's rights including but not limited to the right to know the reason for his arrest and the right to see a warrant. Weber as supervisor, should have and could have known that he was responsible for the proper training and supervision of Constable Litzelman. Even though Litzelman testified he had made numerous "arrests" on warrants, he had no idea of the proper procedure to make such arrests. **(N.T. Litzelman, p. 24, lines 2-14)**.

Constable Weber and Pennsylvania State Constables had already created unconstitutional policy in creation of a "de facto" corporation without legislative authority; secondly, they created policy by their failure to stop Constable Peterman's assault of Brenda Lawvere and her minor children, and tacitly approved of Constable Peterman's actions. Thirdly, unconstitutional policy was created by Weber's failure to notify Scott Lawvere of the reason for his arrest and to preserve his rights before interrogating and arresting him.

Therefore, Captain Weber, Supervisor and creator of "Pennsylvania State Constables" is liable for deprivations of Scott Lawvere's rights. Capt. Weber and Defendant Constables can be held liable for "one act" although several acts actually took place. Weber made a

conscious and "deliberate choice" to follow his course of action made from various alternatives, thereby creating unconstitutional custom and policy. City of Oklahoma v. Tuttle, 471 U.S. 808, 105 S.Ct. 2427, 85 L.Ed.2d 791 (1985).

Summary judgment should not have been granted since issues of fact surround the rights deprivation of the Plaintiffs and the assault upon Brenda Lawvere and her children by Defendant Constables.

IV. IS DEFENDANT LANGDON CULPABLE IN THE ACTIONS OF THE SCHOOL DISTRICT, HARRINGTON, AND ROBIN SCHULLER?

18. When Plaintiffs were prosecuted criminally for alleged school absence, the Commonwealth was represented in the criminal action by attorney J. Howard Langdon, who had also at one time represented the Lawveres. Mr. Langdon is not a public prosecutor, but is a private attorney that has been retained by the East Lycoming School district for the past 10 years **(N.T. Harrington p.20, lines 23-25, p. 21, lines 1-4)**.

19. Mr. Harrington conferred with attorney Langdon before criminal charges were filed against Scott and Brenda Lawvere **(N.T. Harrington, p. 19 lines 25-p. 20 lines 14)**. Attorney Langdon as solicitor for the East Lycoming School District is responsible for enforcing the Pennsylvania School Code and East Lycoming School District policies **(N.T. DeWire, p. 19, lines 1-4)**. According to Board Member Myers, Langdon advised the School District on legalities of the School Code; it was also his responsibility to insure policies are accurate and enforced properly **(N.T. Myers, p. 12, lines 4-6; p. 12, lines 17-22).**

20. Therefore, Langdon is involved in day to day operations of the East Lycoming School District and is involved in decision making regarding policy. In Pembaur, supra, the State prosecutor was held to be an official "authorized to establish policy" since the officers in question relied upon the Prosecutors legal advice in affecting the service of third party warrants. In serving those warrants, the defendants violated Pembaur's rights to be free from illegal search and seizure. Unlike Pembaur, Harrington and Langdon chose a course of conduct in authorizing the filing and prosecution of the Lawveres upon a private criminal complaint without the District Attorney's authorization and approval in violation of State law. It is only the District Attorney who is authorized to investigate and prosecute criminal cases, not the Defendants.

Therefore, there is an issue of material fact regarding the culpability of Attorney Langdon in the investigation and prosecution of the Plaintiffs. Summary judgment should not have been granted and Defendant Langdon should not have been dismissed.

V. IS DISTRICT MAGISTRATE McRAE LIABLE FOR HIS ACTS OUTSIDE THE SCOPE OF HIS OFFICE UNDER COLOR OF LAW?

21. The record is filled with evidence that District Magistrate McRae overstepped the scope of his office and violated Plaintiffs' rights including but not limited to the right to have access to information. McRae knowingly and willingly refused Plaintiffs access to their court files in State case NT-0000619-94 and NT-0000620-94 which was documented by clerks in his office in the court docket. **(Exhibit XX - see Table of Contents #13)**.

McRae also violated his Oath of Office to the people and his duties as a Magistrate. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 @ 384 (1947). McRae should have known he had a duty and obligation to protect the rights of the Plaintiffs in the alleged State action. Plaintiffs brought to his attention the deficiencies of process and in the School District's claims; in return they were threatened, harassed and told that if the Plaintiffs wanted to review the file they would have to "subpoena' it. When McRae stepped outside the scope of his office, he made himself liable in his individual capacity and is liable to the Plaintiffs for those actions.

Since genuine issues of material fact existed, McRae should not have been dismissed from the action and summary judgment should not have been granted. Plaintiffs case should have been allowed to proceed to trial before a jury of their peers.

CONCLUSION

22. There is sufficient evidence on the record showing that there were genuine issues of material fact and Plaintiffs case should have proceeded before a jury of their peers. Robin Schuller did not act alone, but upon the approval and authorization of the East Lycoming School .District, Howard Langdon, and Superintendent Harrington when she filed a private criminal complaint against the Plaintiffs without evidence and without approval.

Captain Gurn Weber and other Constables created a municipal corporation known as "Pennsylvania State Constables" without legislative authorization and tacitly approved of and authorized the rights deprivations suffered by the Lawvere family.

District Magistrate McRae knowingly and willfully denied Plaintiffs access to their court file and public information.

All of the Defendants have made conscious decisions to take a course of action from "alternative choices". All unconstitutional acts which deprived and injured the Plaintiffs were done with the approval and authorization of policymakers, be it Pennsylvania State Constables, East Lycoming School District, or District Justice McRae. The events surrounding these acts, even the acts themselves were denounced by the Defendants who never presented preponderance of evidence or any unquestionable evidence before the courts of their liability.

Based upon the evidence in the record, the case should have been allowed to proceed to trial before a jury and the Plaintiffs should have been granted their day in court. Plaintiffs respectfully request that this Court rehear and overturn its decision of November 14, 1997, and allow Plaintiffs case to proceed to trial.

Respectfully Submitted,

_____

Scott and Brenda Lawvere
Ambassadors for Christ
P.O. Box 46,Unityville, PA 17774
(717)-458-4522

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SCOTT LAWVERE AND BRENDA LAWVERE,	: No. 4:CV-95-1515
Plaintiffs	: Complaint filed 9/8/95
vs.	: (Judge Muir)
THE EAST LYCOMING SCHOOL DISTRICT, et al.,	:
Defendants	:

ORDER
February 13, 1997

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On January 29, 1997, we issued an order granting the remaining Defendants' motion for summary judgment and directing that judgment be entered today. When that judgment is entered, all claims of the Plaintiffs will have either ben dismissed or will have been the subject of summary judgment in favir of all of the Defendants.

Each law clerk files with the judge each Friday a report which lists all motions ripe for decision for which he or she has the obligation of preparing the first draft of an order relating to the motion. The law clerk also specifies on each weekly report the number of days each motion has been ripe.

The law clerk responsible for the first draft relating to motions in this case filed weekly reports as to motions ripe but did not set forth the below-mentioned motions on his reports.

The undersigned deeply regrets that the above motions were not previously acted upon. The purpose of this order is

to deny as moot all motions in this case which are still pending. They are listed below.

NOW, THEREFORE, IT IS ORDERED THAT:

The following motions filed by the Lawveres are denied as moot:

Motion for Reconsideration filed 6/3/96
Motion to Compel DeWire, filed 6/10/96
Motion to Compel Schuller, filed 6/10/96
Motion to Compel East Lycoming School Dist., filed 6/10/96
Motion for Partial Summary Judgment, filed 8/2/96
Motion for Sanctions against Schuller filed 8/2/96
Motion for Sanctions against Constables filed 8/2/96
Motion to Compel Harrington filed 8/2/96
Motion for extension of time filed 8/2/96
Motion to Compel Constables filed 8/12/96
Motion to Compel Schuller filed 8/12/96
Motion to Compel East Lyco. Sch. Dist. filed 8/12/96
Motion for Default Judgment against Weber filed 8/29/96
Motion for Default Judgment against Litzelman filed 8/29/96
Motion for Default Judgment against Peterman filed 8/29/96
Motion for Hearing filed 10/2/96
Motion for Extension of Time filed 10/2/96
Motion to Compel Peterman filed 10/23/96
Motion for Sanctions filed 10/23/96
Motion to Compel Weber filed 10/23/96
Motion to Strike Brief filed 12/2/96 (doc 210)
Motion to Strike Brief filed 12/2/96 (doc 211)

Muir, U.S. District Judge

GENERAL DOCKET FOR Third Circuit Court of Appeals

Court of Appeals Docket #: 97-7215 Filed: 4/30/97
Nsuit: 3440 Civil Rights: Other
Lawvere, et al v. East Lycoming Sch, et al
Appeal from: U.S. District Court for the Middle District of Pennsylvania
Lower court information:
District: 0314-3 : 95-cv-01515
Date Filed: 9/8/5
Date order/judgment: 3/19/97
Date NOA filed: 4/16/97
Fee status: paid Prior cases: None
Current cases: None
Docket as of August 16, 1997 3:35 am Page 1
Proceedings include all events.
97-7215 Lawvere, et al v. East Lycoming Sch, et al

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BRENDA LAWVERE
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v.

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Sherr, Joffe & Zuckerman

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C. ROGER MCRAE, District Magistrate, all in their oficial and individual capacities
MaryEllen Gallagher
FTS 560-6315
215-560-6300
[COR NTC sta]

Appellee

Supreme Court of Pennsylvania
Administrative Office of PA
Courts
1515 Market Street
Suite 1414
Philadelphia, PA 19102

LARRY PETERMAN, Office of Constable, Schrewberry Twp.
Appellee [COR NTC ret]

J. David Smith (See above)
R. Matthew Patch (See above)
[COR NTC ret]

STEVEN LITZELMAN, Office of Constable Jersey Shore Borough
Appellee [COR NTC ret]

J. David Smith (See above)
R. Matthew Patch (See above)
[COR NTC ret]

GURN WEBER, Office of Old Lycoming Twp.
Appellee [COR NTC ret]

J. David Smith Constable (See above)
R. Matthew Patch (See above)
[COR NTC ret]

SCOTT LAWVERE; BRENDA LAWVERE
Appellants

v.

E LYCOMING SCH DIST; PA STATE CONSTABLES; ROBIN SCHULLER, Principal; J. HOWARD LANGDON, Attorney; C. ROGER MCRAE, District Magistrate, all in their oficial and individual capacities; LARRY PETERMAN, Office of Constable, SchrewberryTwp.; STEVEN

LITZELMAN, Office of Constable Jersey Shore Borough; GURN WEBER, Office of Constable Old Lycoming Twp.
Appellees

4/30/97 CIVIL CASE DOCKETED. Notice filed by Mr. and Mrs. Scott Lawever, Ambassadors for Christ □ (cpm)

4/30/97 TRANSCRIPT PURCHASE ORDER (PART I), no proceedings in District Court. (cpm)

4/30/97 BRIEFING NOTICE ISSUED. Appellant brief and appendix due 6/9/97, . (cpm)

5/2/97 APPEARANCE from Attorney MaryEllen Gallagher on behalf of Appellee C. Roger McRae, filed. (mmb)

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5/12/97 APPEARANCE from Attorney Anthony R. Sherr on behalf of Appellees East Lycoming School District & Robin Schuller, filed. (mmb)

5/12/97 DISCLOSURE STATEMENT on behalf of Appellees East Lycoming School District & Robin Schuller, filed. (mmb)

6/9/97 BRIEF on behalf of Appellants Scott Lawvere and Brenda Lawvere Copies: 10, Delivered by mail, filed. Certificate of service date 6/9/97. (cpm)

6/9/97 APPENDIX on behalf of Appellants Scott Lawvere and Brenda Lawvere Copies: 4 Volumes: 2, Delivered by mail, filed. Certificate of service date 6/9/97. (cpm)

6/30/97 BRIEF on behalf of Appellee C. Roger McRae, Pages: 15, Copies: 10, Delivered by mail , filed. Certificate of Service date 6/30/97. (cpm)

7/1/97 RECORD, filed. (cpm)

7/2/97 Notice of telephone request. 10 labels stating the appeal arose from the Middle District of PA instead of from the Eastern District of PA were req from Appellee Justice Roger McRae. Response due in 3 days. (cpm)

7/8/97 BRIEF on behalf of Appellee J. Howard Langdon, Pages: 12, Copies: 10, Delivered by mail, filed. Certificate of Service date 7/7/97. (tap)

7/9/97 BRIEF on behalf of Appellee E Lycoming Sch District & Robin Schuller. Pages: 18, Copies: 10, Delivered by mail, filed. Certificate of date 7/9/97. (tap)

7/10/97 Requested motion for leave to file appendix on behalf of Lycoming Sch Dist and Schuller, white front and back covers for appendix, and certificate of bar membership for brief. Response due in 3 days. (tap)

7/11/97 BRIEF on behalf of Appellees PA State Constables, Larry Peterman, Steven Litzelman, Gurn Weber, Pages: 12, Copies: 10, Delivered by mail, filed. Certificate of Service date 7/11/97. (tap)

7/11/97 COMPLIANCE RECEIVED- Motion for leave to file sup apx attached to brief on behalf Lycoming Sch Dist and Schuller, covers for appendix, bar membership. (tap)

7/11/97 MOTION by Appellees Robin Schuller & East Lycoming School District to Designate Exhibits for Inclusion in Appendix, ZZ#CONSTRUED ZZ#AS a motion to file a supplemental appendix, filed. Answer due 7/21/97. Certificate of Service dated 7/11/97. (mmb)

7/14/97 Notice of telephone request to submit motion for leave to file appendix attached to brief on behalf of Langdon. Response due in 3 days. (tap)

7/14/97 REPLY BRIEF on behalf of Appellant Scott Lawvere, Appellant Brenda Lawvere, Copies: 10, Delivered by mail, filed. Certificate of service date 7/14/97. (wab)

7/16/97 Requested motion for leave to file apx attached to brief on behalf of PA State Constables et al. Response due in 3 days. (tap)

7/21/97 MOTION filed by Appellee J. Howard Langdon to designate exhibits for inclusion in appendix construed as a motion for leave to file supplemental appendix. Answer due 7/28/97. Certificate Service dated 7/18/97. (ctc)

7/21/97 COMPLIANCE RECEIVED- Motion for leave to file exhibits attached to appellee's brief on behalf of Langdon. (tap)

7/23/97 MOTION by Appellants to Strike Motion by Appellees, East Lycoming School District & Schuller, to Designate Exhibits for Inclusion in Appendix, ZZ#TREATED ZZ#AS a response to motion to designate exhibits, filed. Certificate of service dated 7/21/97. (mmb)

7/23/97 REPLY BRIEF on behalf of Appellants Scott Lawvere and Brenda Lawvere to Langdon's Brief. Delivered by mail, received. Certificate of service date 7/21/97. (cpm)

7/25/97 REPLY BRIEF on behalf of Appellants Scott Lawvere and Brenda Lawvere to East Lycoming School District and Schuller's brief. Copies: 10, Delivered by mail, received. Certificate of service date 7/23/97. (cpm)

7/28/97 APPEARANCE from Attorney R. Matthew Patch on behalf of Appellees PA State Constables, Larry Peterman, Steven Litzelman and Gurn Weber, filed. (cpm)

7/28/97 MOTION filed by Appellees PA State Constables, Larry Peterman, Steven Litzelman and Gurn Weber to file supplemental appendix. Answer due 8/4/97. Certificate of Service dated 7/25/97. (cpm)

7/28/97 COMPLIANCE RECEIVED- Motion for leave to file sup apx attached to brief on behalf of PA Constables. (tap)

7/28/97 REPLY BRIEF on behalf of Appellants Scott Lawvere and Brenda Lawvere to Pennsylvania Sate Constable's brief. Copies: 10, Delivered by mail, received. Certificate of service date 7/25/97. (cpm)

7/29/97 ORDER (Clerk) granting motion to file supplemental appendix by Appellee, J. Howard Langdon, referring to the merits panel the motion by appellants to strike appellees' motion, and motion by appellees' Robin Schullter

and East Lycoming School District to file supplemental appendix. ZZ#SEND ZZ#TO ZZ#MERITS ZZ#PANEL. (ctc)

7/29/97 SUPPLEMENTAL APPENDIX on behalf of J. Howard Langdon, filed per Clerk's 7/29/97 Order. Attached to brief. (tap)

8/1/97 AMENDED MOTION filed by Appellees PA State Constables, Larry Peterman, Steven Litzelman, Gurn Weber to file supplemental appendix. . Answer due 8/8/97. Certificate of Service dated 7/29/97. (cpm)

8/11/97 MOTION filed by Appellant to reconsider order dated 7/29/97 Answer due 8/18/97. Certificate of Service dated 8/8/97. (cpm)

GENERAL DOCKET FOR Third Circuit Court of Appeals
Court of Appeals Docket #: 97-7215 Filed: 4/30/97
Nsuit: 3440 Civil Rights: Other
Lawvere, et al v. East Lycoming Sch, et al
Appeal from: U.S. District Court for the Middle District of Pennsylvania

Lower court information:

District: 0314-3 : 95-cv-01515
Date Filed: 9/8/5
Date order/judgment: 3/19/97
Date NOA filed: 4/16/97

Fee status: paid
Prior cases: None
Current cases: None
Docket as of January 3, 1998 3:22 am Page 1
Proceedings include all events.
97-7215 Lawvere, et al v. East Lycoming Sch, et al

SCOTT LAWVERE Scott Lawvere
Appellant 717-458-4522
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BRENDA LAWVERE Brenda Lawvere
Appellant 717-458-4522
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v.

E LYCOMING SCH DIST Anthony R. Sherr
Appellee FTS 834-7679

610-941-5400
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Sherr, Joffe & Zuckerman
200 Four Falls Corporate Center
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PA STATE CONSTABLES — J. David Smith
Appellee — FTS 326-5529
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Williamsport, PA 17701

ROBIN SCHULLER, Principal — Anthony R. Sherr
Appellee — (See above)
[COR NTC ret]

J. HOWARD LANGDON, Attorney — Edward A. Monsky
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Scranton, PA 18501-0590

C. ROGER MCRAE, District — MaryEllen Gallagher
Magistrate, all in their — FTS 560-6315
oficial and individual — 215-560-6300
capacities — [COR NTC sta]

Appellee
Supreme Court of Pennsylvania
Administrative Office of PA Courts
1515 Market Street
Suite 1414
Philadelphia, PA 19102

LARRY PETERMAN, Office of Constable, Schrewberry Twp.
Appellee
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(See above)
[COR NTC ret]
R. Matthew Patch
(See above)
[COR NTC ret]

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(See above)
[COR NTC ret]
R. Matthew Patch
(See above)
[COR NTC ret]

GURN WEBER, Office of Constable Old Lycoming Twp.
Appellee
J. David Smith
(See above)
[COR NTC ret]
R. Matthew Patch
(See above)
[COR NTC ret]

SCOTT LAWVERE; BRENDA LAWVERE

Appellants

v.

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Appellees

Docket as of January 3, 1998 3:22 am Page 4
Proceedings include all events.
97-7215 Lawvere, et al v. East Lycoming Sch, et al

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7/11/97 COMPLIANCE RECEIVED- Motion for leave to file sup apx attached to brief on behalf Lycoming Sch Dist and Schuller, covers for appendix, bar membership. (tap)

7/11/97 MOTION by Appellees Robin Schuller & East Lycoming School District to Designate Exhibits for Inclusion in Appendix, ZZ#CONSTRUED ZZ#AS a motion to file a supplemental appendix, filed. Answer due 7/21/97. Certificate of Service dated 7/11/97. (mmb)

7/11/97 SUPPLEMENTAL APPENDIX ATTACHED TO BRIEF on behalf of PA State Constables, Larry Peterman, Steven Litzelman, Gurn Weber. Copies: 12 Volumes: 1

Delivered by mail, received. Certificate of service date 7/11/97. (See Clerk order dated 8/25/97) (cpm)

7/14/97 Notice of telephone request to submit motion for leave to file appendix attached to brief on behalf of Langdon. Response due in 3 days. (tap)

7/14/97 REPLY BRIEF on behalf of Appellant Scott Lawvere, Appellant Brenda Lawvere, Copies: 10, Delivered by mail, filed. Certificate of service date 7/14/97. (wab)

7/16/97 Requested motion for leave to file apx attached to brief on behalf of PA State Constables et al. Response due in 3 days. (tap)

7/21/97 MOTION filed by Appellee J. Howard Langdon to designate exhibits for inclusion in appendix construed as a motion for leave to file supplemental appendix. Answer due 7/28/97. Certificate Service dated 7/18/97. (ctc)

7/21/97 COMPLIANCE RECEIVED- Motion for leave to file exhibits attached to appellee's brief on behalf of Langdon. (tap)

7/23/97 MOTION by Appellants to Strike Motion by Appellees, East Lycoming School District & Schuller, to Designate Exhibits for Inclusion in Appendix, ZZ#TREATED ZZ#AS a response to motion to designate exhibits, filed. Certificate of service dated 7/21/97. (mmb)

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7/25/97 REPLY BRIEF on behalf of Appellants Scott Lawvere and Brenda Lawvere to East Lycoming School District and Schuller's brief. Copies: 10, Delivered by mail, received. Certificate of service date 7/23/97. (cpm)

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7/28/97 COMPLIANCE RECEIVED- Motion for leave to file sup apx attached to brief on behalf of PA Constables. (tap)

7/28/97 REPLY BRIEF on behalf of Appellants Scott Lawvere and Brenda Lawvere to Pennsylvania Sate Constable's brief. Copies: 10, Delivered by mail, received. Certificate of service date 7/25/97. (cpm)

7/29/97 ORDER (Clerk) granting motion to file supplemental appendix by Appellee, J. Howard Langdon, referring to the merits panel the motion by appellants to strike appellees' motion, and motion by appellees' Robin Schullter and East Lycoming School District to file supplemental appendix. ZZ#SEND ZZ#TO ZZ#MERITS ZZ#PANEL. (ctc)

7/29/97 SUPPLEMENTAL APPENDIX on behalf of J. Howard Langdon, filed per Clerk's 7/29/97 Order. Attached to brief. (tap)

7/30/97 Document entitled "Appellant's Motion to Strike Appellee Howard Langdons Motion to Designate Exhibits for Inclusion in Appendix construed as a RESPONSE filed by Appellants Scott Lawvere and Brenda Lawvere to Appellees' PA State Constables, et al. motion to file supplemental appendix Certificate of service dated 7/28/97. (cpm)

8/1/97 AMENDED MOTION filed by Appellees PA State Constables, Larry Peterman, Steven Litzelman, Gurn Weber to file supplemental appendix. . Answer due 8/8/97. Certificate of Service dated 7/29/97. (cpm)

8/11/97 MOTION filed by Appellant to reconsider order dated 7/29/97 Answer due 8/18/97. Certificate of Service dated 8/8/97. (cpm)

8/11/97 Document entitled "Appellants' Motion to Strike Appellee Pennsylbania State Constables Motion for Leave to File a Supplementary Appendix and Amended Motion for Leave to File a Supplemental Appendix" construed as a RESPONSE filed by Appellants Scott Lawvere and Brenda Lawvere to Appellee's Amended Motion to file supplemental appendix. Certificate of service dated 8/7/97. (cpm)

8/25/97 ORDER (Clerk) The Motion by Appellees, PA State Constables, Larry Peterman, Steven Litzelman and Gurn Weber, to file a supplemental appendix together with the response by Appellants and the Amended Motion by Appellees to file a supplemental appendix together with the response by Appellants are considered. The supplemental appendix is received for the information of the Courtr only as

it does not comply with the Federal Rules of Appellate Procedure and/or Third Circuit Local Appellate Rules in that it does not contain a table of contents. The supplemental appendix shall be filed only if the Court so directs. The motion by Appellants to Reconsider the Clerk order dated July 29, 1997 is denied, filed. (cpm)

9/8/97 MOTION filed by Appellants for Judicial Determination. Answer due 9/16/97. Certificate of Service dated 9/6/97. ZZ#SEND ZZ#TO ZZ#MERITS (cpm)

9/10/97 Document submitted by Appellants entitled "Unsworn Declaration Under The Penalty of Perjury {pursuant to Title 28, Section 1746(1)}," received. ZZ#SEND ZZ#TO ZZ#MERITS (cpm)

9/23/97 ORDER (Clerk) referring to the merits panel the motion by Appellants for Judicial Determination together with the document entitled "Unsworn Declaration of Brenda lavere" for such action as the judges deem appropriate. ZZ#SEND ZZ#TO ZZ#MERITS ZZ#PANEL. (cpm)

10/3/97 CALENDARED for Thursday October 16, 1997. (par)

10/16/97 SUBMITTED (Pro se - 3rd Cir. LAR 34.1(a)) October 16, 1997 Coram: Stapleton, Cowen and Lewis, Circuit Judges. (par)

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Proceedings include all events.
97-7215 Lawvere, et al v. East Lycoming Sch, et al

11/13/97 ORDER (Stapleton, Authoring Judge, Cowen, Lewis, Circuit Judges) motion by appellees' to designate exhibits for inclusion in appendix, which the court may wish to construe as a motion to file a supplemental appendix and

denying and motion by appellants' to strike appellees' motion to designate exhibits for inclusion in appendix, which the court may wisht to construe as a motion to file a supplemental appendix are denied, filed. (ctc)

11/14/97 JUDGMENT-ORDER (Stapleton, Authoring Judge, Cowen, Lewis, Circuit Judges), AFFIRMED: Costs taxed against appellant, filed. (lrb)

11/26/97 BILL OF COSTS filed by Appellees Gurn Weber, Steven Litzelman, Larry Peterman and Appellee PA State Constables. Certificate of service dated 11/24/97 (lrb)

11/28/97 PETITION by Appellants Scott and Brenda Lawvere for rehearing in banc. Certificate of service dated 11/28/97, filed. (lrb)

11/28/97 LETTER filed by Appellants Brenda Lawvere and Scott Lawvere construed as a motion for leave to file exhibits with the petition for rehearing inbanc. (lrb)

11/28/97 Exhibitin support of appellants' petition for rehearing en banc recieved for the information of the Court Only. (lrb)

12/4/97 MOTION filed by Appellants Brenda Lawvere and Scott Lawvere for leave to supplement the petition for rehearing with attached documents. Certificate of Service dated 11/29/97. (lrb)

12/5/97 ORDER (Stapleton, Circuit Judge) granting motion by Appellants Brenda Lawvere and Scott Lawvere for leave to file exhibits in support of the petition for rehearing in banc, filed. (lrb)

12/5/97 ORDER (Stapleton, Circuit Judge) granting motion to supplement the petition for rehearing in banc with

attached exhibits by Appellant Brenda Lawvere, Scott Lawvere, filed. (lrb)

12/22/97 ORDER (Sloviter, Chief Judge, Becker, Stapleton, Authoring Judge, Mansmann, Greenberg, Scirica, Cowen, Nygaard, Alito, Roth, Lewis, McKee, Rendell, Circuit Judges) denying petition for in banc rehearing by Appellants Brenda Lawvere and Scott Lawvere, filed. (lrb)

12/30/97 MANDATE ISSUED, filed. (ddw)
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UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
PHILADELPHIA, PA

SCOTT AND BRENDA LAWVERE.) Ambassadors for Christ, **Appellants**)	Appeal No: 97-7215 Case No: 4:CV-95-1515
vs.	
EAST LYCOMING SCHOOL DISTRICT, et al In their official and individual capacities, **Appellees**	

APPELLANTS' OBJECTION TO DEFENDANT CONSTABLES BILL OF COSTS

COMES NOW, Appellants Scott and Brenda Lawvere, Ambassadors for Christ to submit their Objection to Defendant Constables Bill of Costs.

1. On November 24, 1997, Defendant Constables entered a bill of costs for the reproduction of the brief and appendix in accordance with this courts ruling on November 14, 1997.

2. Plaintiffs object to this alleged bill of costs and would like Defendants to produce a copy of an itemized bill from said Defendants. **(Plaintiffs have attached a copy of Defendants bill of costs for your convenience.)** This bill clearly violates LAR 39.0(c).

3. Plaintiffs also object to Defendants adding the costs of photocopying their appendix of 12 pages since it was entered in violation of the rules and these costs should be disallowed.

4. Plaintiffs have learned through personal knowledge and research that Defendant Constables have overcharged and padded their bill. Plaintiffs have called a local stationary store called Plankenhorns where Williamsport attorneys buy their cover stock. We were told that the cost of the cover stock cost from .06-.08 cents per page, this reflects current market prices. Plaintiffs feel that the following sample of a bill of costs would be a more reasonable and fair bill.

Reproduction per page	20 x 16 pgs. @ .10 ea.	$32.00
Bindings	20 @ 2.00 ea.	$40.00
Covers (this includes front and back)	20 @ .30 ea	$ 6.00
Total	$78.00	

WHEREFORE because of the above mentioned facts and figures, Plaintiffs respectfully request that this Honorable court reject Defendant Constables Bill of Costs, and in the alternative accept Plaintiffs estimated costs which is more reasonable or make Defendant Constables produce an itemized bill.

Respectfully Submitted By:

_____

Scott and Brenda Lawvere, Appellants, Pro Per
Ambassadors for Christ
P.O. Box 46
Unityville, PA 17774
(717)-458-4557

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
PHILADELPHIA, PA

SCOTT AND BRENDA LAWVERE,) Ambassadors for Christ, **Appellants**)	Appeal No: 97-7215 Case No: 4:CV-95-1515
vs.	
EAST LYCOMING SCHOOL DISTRICT, et al In their official and individual capacities, **Appellees**	

APPELLANTS' MOTION FOR LEAVE TO FILE APPELLANT'S OBJECTIONS TO DEFENDANT CONSTABLES BILL OF COSTS

COMES NOW, Appellants Scott and Brenda Lawvere, Ambassadors for Christ to submit their Motion for Leave to File Appellants' Objections to Defendant Constables Bill of Costs, which was submitted within time but the Clerk of Courts refuses to file without this motion. Plaintiffs memorandum of law is incorporated herein.

I. Procedural History

1. Defendant Constables' filed their Bill of Costs for photocopying of their Reply Brief and unauthorized Supplemental Appendix, in the amount of $119.00 on November 24, 1997. [Note: This is not reproduction which allows for a higher rate].

2. Plaintiffs objected to this alleged Bill of Costs and served said objection on December 5, 1997. (see attached Exhibit "A" certificate of service). The Clerk's office has refused to file Plaintiffs' Objection.

II. Argument

3. On December 16, 1997, Lenore R. Benoit, case manager, sent Plaintiffs a letter stating she refused to enter Plaintiffs' Objection to the Bill of Costs into the record, claiming that said "Objection" was untimely (see attached exhibit "B").

Ms. Benoit alleged basis for this claim is pursuant to F.R.A.P. Rule 39(d). This rule states that "Objections to the bill of costs must be filed within 10 days of service on the party against whom costs are to be taxed unless the time is extended by the court." (Page 75, #rd Circuit Local Appellate Rules)."

4. F.R.A.P. Rule 26(c) "Additional Time After Service by Mail" states that "Whenever a party is required or permitted to do an action within a prescribed period after service of a paper upon that party and the paper is served by mail, 3 days shall be added to the prescribed period."

"Defendant Constables mailed their Bill of Costs on November 24, 1997. Plaintiffs had 10 PLUS AN ADDITIONAL 3 days to respond since said Bill of Costs was served by mail and Plaintiff was required to respond within "10 days of service" (F.R.A.P. Rule 39(d)". To wit, Defendant served said Bill of Costs on November 24, 1997. From November 25, 1997, Plaintiff had 13 days to FILE said Objection with the Court. On December 5, 1997, well within the time allowed by the Court, Plaintiffs mailed their Objection to the Court."

5. This is not the first time the Clerk's office has made judicial decisions without being duly authorized pursuant to the Federal Rules of Appellate Procedure. Plaintiffs had submitted a Motion for Judicial Determination to the Third Circuit which was not addressed. The Third Circuit has not issued an order allowing the Clerk's office to dispose of Motions and certainly Ms. Benoit does not have the authority to interpret the Rules of Court as she sees fit.

6. If there was any question regarding the timeliness, Ms. Benoit should have presented those questions to the Court and not relied upon her own discretion which in fact violates the very Rules upon which she allegedly relies.

"F.R.A.P. Rule 25(a) specifically states:
"A paper required or permitted to be filed in a court of appeals must be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing, EXCEPT that briefs and appendices are treated as filed on the day of mailing if the most expeditious form of delivery by mail, except special delivery, is used."

Plaintiffs, who are not attorneys, have shown due diligence throughout this action in attempting to comply with the Rules of Court even though they are under no obligation to do so. Haines v. Kerner, 404 U.S. 519, 30 L.Ed.2d 652 (1972) and Conley v. Gibson, 355 U.S. 41, 2 L.Ed2d 80 (1957). According to the Rules of Court, Plaintiffs Objection was timely, and it is NOT within Ms. Benoit's purview to make a determination otherwise.

7. Plaintiffs also point out that the Defendants have not followed the Rules of Appellate Procedure or the Local Rules. And now when there is a question as to whether or not the Plaintiffs are one day late, the Clerk's office decides to hold Plaintiffs to a higher standard which is not only unprofessional but also violates Plaintiffs' rights to have equal access to the courts and due process of law.

III. Conclusion

WHEREFORE, based upon the foregoing facts and evidence, Plaintiffs respectfully request leave to file their Objection to Defendant Constables Bill of Costs or in the alternative have said Objection which is currently in the hands of the Clerk's office be deemed timely filed."

Respectfully Submitted By:

_____

Scott and Brenda Lawvere,
Appellants, Pro Per
Ambassadors for Christ
P.O. Box 46
Unityville, PA 17774
(717)-458-4557

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
PHILADELPHIA, PA

SCOTT AND BRENDA LAWVERE,) Ambassadors for Christ, **Appellants**)	Appeal No: 97-7215 Case No: 4:CV-95-1515
vs.)	
EAST LYCOMING SCHOOL DISTRICT, et al. In their official and individual capacities, **Appellees**)	

APPELLANTS' MOTION
FOR MANDAMUS

COMES NOW, Appellants Scott and Brenda Lawvere, Ambassadors for Christ to submit their Motion for Mandamus, pursuant to the Federal Rules of Appellate Procedure, to compel the Clerks office of the Appellate Court, in particular, Lenore Benoit, case manager, to perform her duties as prescribed in the Federal Rules of Appellate Procedure and statutory law. Plaintiffs memorandum of law is incorporated herein.

I. PROCEDURAL HISTORY

1. Defendant Constables' filed their Bill of Costs for photocopying of their Reply Brief and unauthorized Supplemental Appendix, in the amount of $119.00 on November 24, 1997.

2. Plaintiffs objected to this alleged Bill of Costs and served said "Objection" on December 5, 1997. (see attached exhibit "A" certificate of service). The Clerks office has refused to file Plaintiffs' "Objection.

3. On December 16, 1997, Lenore R. Benoit, case manager, sent Plaintiffs a letter stating she refused to enter Plaintiffs' Objection to the Bill of Costs into the record, claiming that said "Objection" was untimely (see attached exhibit "B").

II. ARGUMENT

4. Provisions for the Clerks of District Courts are provided by statutory law and can be found in Title 28, U.S.C. More specifically, duties for Clerks on the Appellate Level can be found at Rule 45, Federal Rules of Appellate Procedure. The Clerk's responsibilities include but are not limited to creating court files, preparing dockets and maintaining dockets, and filing motions, pleadings, and documents submitted by parties to actions in court. Plaintiffs have found no provisions in the F.R.A.P. Rules, or LAR rules allowing Clerks to refuse to file properly served papers.

5. The clerk of Court may dispose of motions that "ordinarily" can be disposed of by a single judge pursuant to F.R.A.P. Rule 27(c) and LAR 27.5 , providing the Appellate Court has issued such an order, and the motions are "ministerial" in nature.

The Third Circuit has NOT issued an order granting the Clerk of Court the same authority as the "single judge" to dispose of motions of a ministerial nature, or for that matter, any other motion. Nor has there been any order that grants the Clerks office the authority to refuse to file documents into the record.

6. The Clerk's office has a long established custom and policy of acting without legislative authority or an order from the Court, Disposing of motions, calling the Defendant's Attorneys and giving legal advice and now refusing to file properly served papers of Plaintiffs who are Pro Per. The record shows that the Clerk's office has repeatedly held Plaintiffs, Pro Per, to a higher standard than the Defendant's Attorneys in this action, violating Plaintiffs rights including but not limited to access to the courts, and their due process rights.

The Clerk's office has called the Defendants Attorneys on July 2, 10, 14, 16 advising them to correct procedural errors, and asking them to file papers with the Court. The Clerk's office even filed Defendant Constables Motion to Supplement their Appendix on July 28, 1997, even though Plaintiffs have never to this day been served those documents. The Clerk's office did of course require Plaintiffs to answer a motion that they were never served.

The Clerk's office has ruled on the majority of the motions entered upon the docket, without authority. In fact Plaintiffs have numerous unopposed motions in the docket that the Clerks office has denied. When Plaintiff Brenda Lawvere questioned Ms. Benoit concerning these unopposed motions, Ms. Benoit stated, "that it did not matter whether the Motions were unopposed that the Defendants were

not required to respond to them, and that it was within the discretion of the Clerks office to deny those unopposed motions", clearly a violation of her duties as an officer of the court.

7. It is apparent on the record that Defendant Langdon was granted preferential treatment in that his motion was "granted" by the Clerk's office when similar motions submitted by the other Defendants were submitted to the merits panel or were "considered".

8. Neither the Legislature, the Court, nor the Rules make provisions for Clerks of Court to give out legal advice. The Clerk has not been given the authority to dispose of motions without express permission from the Court. Nor has the Clerk been given the authority to refuse to file properly served papers or make determinations as to what is to be filed. The Clerk's duties and responsibilities as outlined in Title 28, U.S.C. is specifically ministerial in nature wherein the Clerk is authorized to create and maintain a court file and docket.

9. Plaintiffs, who are not attorneys, have shown due diligence throughout this action in attempting to comply with the Rules of Court even though they are under no obligation to do so. Haines v. Kerner, 404 U.S. 519, 30 L.Ed.2d 652 (1972) and Conley v. Gibson, 355 U.S. 41, 2L.Ed2d 80 1957). According to the Rules of Court, Plaintiffs Objection was timely, and it is NOT within Ms. Benoit's purview to make a determination otherwise.

For this and the above stated reasons, the Plaintiffs respectfully request that this honorable Court Order the Clerk's office, in particular

Lenore Benoit, case manager, to file all documents submitted to this court, specifically Plaintiffs "Objection.

WHEREFORE, because the Clerk's office, in particular, Lenore Benoit, refuses to do her duties as outlined in Title 28 U.S.C., Plaintiffs respectfully request that this Court Order the Clerk's office and Ms. Benoit to preform their duties and to file documents in the record as outlined by statute and the Rules of Court.

Respectfully Submitted By:

_____

Scott and Brenda Lawvere,
Appellants, Pro Per
Ambassadors for Christ
P.O. Box 46
Unityville, PA 17774
(717)-458-4557

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
PHILADELPHIA, PA

SCOTT AND BRENDA LAWVERE,) Ambassadors for Christ,) **Appellants**) vs.)) EAST LYCOMING SCHOOL) DISTRICT, et al In their official) and individual capacities,) **Appellees**)	Appeal No: 97-7215 Case No: 4:CV-95-1515

APPELLANTS' MOTION FOR
JUDICIAL DETERMINATION
REGARDING AN ALTERED
ORDER DATED DECEMBER 30, 1997

COMES NOW, Appellants Scott and Brenda Lawvere, Ambassadors for Christ to submit their Motion requesting a Judicial Determination of the following issue, which is directed to the Judges of the aforementioned Court of Appeals, Third Circuit. Appellants memorandum of law is incorporated herein.

I. Procedural History

1. On November 14, 1997, the Court issued a Judgment Order in regard to this case. **(See exhibit P21)**

2. On November 24, 1997, Defendants Constables, filed a Bill of Costs in accordance with that order, but in violation of the F.R.A.P. Rules regarding the computation of costs.

3. Plaintiffs filed a Petition for Rehearing on November 28, 1997, which was erroneously treated as a Petition for Rehearing in Banc.

4. On December 5, 1997, Plaintiffs filed an Objection to Defendant Constables Bill of Costs on this court and the Defendants in this case.

5. On December 29, 1997, Plaintiffs filed a Motion for Mandamus and a Motion for Leave to File.

6. On December 30, 1997, the clerks office, altered the Judgment Order dated November 14, 1997, and served it upon the parties to this action. **(see exhibit P22, altered order, and exhibit P23)**

7. As of January 3, 1998, Plaintiffs motions have not been entered upon the record. **(see exhibit P23, copy of docket as of January 3, 1998)**

II. ARGUMENT

6. Since the inception of this case there have been numerous irregularities in this case regarding the legislative and statutory authority of the Clerks office.

Plaintiffs incorporate their Motion for Judicial Determination filed September 6, 1997, into the record at this time.

8. On December 30, 1997, Debra D. Wall, Case Manager, altered a Judgment Order entered upon the record on November 14, 1997, taxing Plaintiffs a specific sum. Plaintiffs have disputed the costs entered upon the record by Defendant Constables. While the court can certify a copy of the judgment as outlined in F.R.A.P. Rule 41, there are no provisions in the rules for the Clerks office to rule on a motion for "Bill of Costs", nor does Title 28 provide statutory or legislative authority for the clerks office to amend and alter a Federal Judges order.

9. The Court has yet to rule on Plaintiffs "Objection to Constable's Bill of Costs, therefore this issue is ripe for disposition.

CONCLUSION

WHEREFORE, since the Court has not ruled on Defendant Constables Motion for Bill of Costs or Plaintiffs Objection and Opposition, and the Clerk's office has allegedly altered a Court Order, Plaintiffs respectfully request a hearing on this issue and ask the court to disallow the Clerk's Amended Order.

Respectfully Submitted By:

_____

Scott and Brenda Lawvere, Appellants, Pro Per
Ambassadors for Christ
P.O. Box 46
Unityville, PA 17774
(717)-458-4557

UNSWORN DECLARATION
UNDER THE PENALTY OF PERJURY
[pursuant to Title 28, § 1746(1)]

I , Plaintiff Brenda Lawvere , being of sound mind and competent to make this declaration, being above the age of 21 and having personal knowledge of the following facts do DECLARE:

On or about July 31, 1997, we received an order from the Clerks office granting Defendant Langdon's Motion for Inclusion. On or about the same time we received an Amended Motion for Inclusion from the Pennsylvania State Constables, Gurn Weber, Larry Peterman, and Steven Litzelman.

On or about July 31, 1997, I called the Clerks office regarding the Order of July 29, 1997, and the Amended Motion for Inclusion sent by the Constables, Peterman, Weber, and Litzelman. I asked the clerk, why they sent Defendant District and Schuller's Motion to the Committee and granted Defendant Langdon's Motion without hearing my Motion in response? The Clerk told me, "they did not receive my Motion to Strike until July 30, 1997", therefore, "they did not have it when they granted Defendant Langdon's Motion." I asked, why they granted his motion 1 day after my response was due, and I received no response.

I also told the Clerk that I had just received an Amended Motion for Inclusion from the Constables, Peterman, Weber, and Litzelman, and that I had never received a Motion for Inclusion from them. She told me, "she knew" and, "we called their attorney the other day and told him that we would hold the Motion until they served the Appellant's with a copy." I told her, "I still had not received a

Motion for Inclusion from Defendant Constables, et al", and I asked her where that left me with answering the Motion that was never served. She informed me "she did not know, and that she could not give me legal advice."

On or about August 20, 1997, I acquired a copy of the Docket. Our Motions to Strike, submitted on July 28, and August 7, 1997, were never recorded, and at that time we discovered that the Clerks repeatedly contacted the other parties without our knowledge. On or about August 30.1997, I received another order from the Clerk "considering" Defendant Constables Motion for Inclusion, and denying our Motion for Reconsideration of the Courts order of July 29, 1997.

On or about August 30. 1997, I contacted the clerks office, and asked her why my motions were not filed. She told me " that they had just been filed, because they had to figure out what to do with them". I asked her why they called the Defendants and asked them to correct their procedural errors. She told me, "that they do that all the time".

I then spoke to Joanne Edwards, Information Officer, in the Staff Attorneys Office. I asked Ms. Edwards, if the Clerks Office could call the parties and advise them to correct procedural errors, and why. She told me, that it was a discretionary function of the Clerks office and that "some of the Attorneys don't know the rules of the Third Circuit Court of Appeals, so they had to be notified of their mistakes so they can be corrected." I told her that the Attorneys were all admitted to practice in the Third Circuit and that I knew some of the Attorneys, in this case, were known on a first name basis by some of the staff. Ms. Edwards also said that we didn't make any mistakes, therefore they didn't call us. I asked her why the clerks office would call parties and not notify us, the Appellant's, of what was going on. She did not

know but she suggested that we contact the clerks office concerning this matter.

I asked her why Defendant Langdon's Motion was granted and the East Lycoming School District and Schuller's Motion, which asked for the same thing, was referred to the committee. I told her, we were being held to a higher standard. I asked, why they would grant Defendant Langdon's Motion for Inclusion, one day after our response was due, without considering out Motion in response. She did not know.

I asked, why the Constables Motion and Amended Motion was allowed to stay in the record and was not struck. She said, the motion was not going to be in the record, it would only be filed if the Judges allowed it. I asked, why it was considered and not sent on to the Judges. She said, I was mistaken and that was not true. She began to tell me that the Appellant's got to submit their brief and appendix, and then the Appellee's got to submit their brief and appendix. I told her that the appendix was to be a joint appendix, to which there was no reply.

I asked, where the duties of the clerk of court can be found. She said, they could be found in the Federal Appellate Procedure under Clerk of Appeals. I asked, where does the clerk get his authority to hear motions? She laughed and said, "he was next level down from the Judge". I asked her where the Order was granting the Clerk authority to rule on Motions. She said, the order of July 29, 1997 was the order.

I , Plaintiff Brenda Lawvere , DECLARE under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Signed _____
Name Brenda Lawvere,Ambassador for Christ
Mailing Address c/o P.O. Box 46,Unityville Pa. 17774

State of Pennsylvania
County of Lycoming

Acknowledged and subscribed before me this _____ day of _____, 19___ A.D.

NOTARY SEAL

_____
Notary Signature

CERTIFICATE OF SERVICE

We, Scott and Brenda Lawvere, Ambassadors for Christ, do hereby certify that the foregoing Appendix to the Petition for Writ of Certiorari was sent U.S. Mail, postage prepaid, to Defendants' Attorneys at the following addresses: East Lycoming School District, Robin Schuller, c/o Anthony Sherr, Esq., 200 Four Falls Corp. Ctr., P.O. Box 800, Suite 400, West Conshohocken, Pa. 19428; Pennsylvania State Constables, Gurn Weber, Larry Peterman, and Steven Litzelman, c/o J. David Smith, Esq., 835 W. 4th St., Williamsport, Pa. 17703; J. Howard Langdon, c/o. Edward Monsky, 425 Spruce St., Scranton, Pa. 1805; C. Roger McRae, c/o Maryellen Gallagher, 1515 Market St., Suite 1414, Phil., Pa. 19102; ~~This document was also served upon the Respondent, U.S. Appellate Court, Third Circuit, by the sheriff in accordance with Rule 00, of the Supreme Court Rules.~~ BF

Done this 12 day of February, 1998.
Respectfully Submitted,
Scott & Brenda Lawvere, Ambassadors for Christ, Petitioners

Scott and Brenda Lawvere
Ambassadors for Christ
c/o P.O. Box 46
Unityville, Penn. 17774
(717)458-4522

Supreme Court, U.S.
FILED
MAR 20 1998
CLERK

No. 97-1343

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

MR. AND MRS. SCOTT LAWVERE,

Petitioners,

v.

THE EAST LYCOMING SCHOOL DISTRICT;
PENNSYLVANIA STATE CONSTABLES;
ROBIN SCHULLER, Principal;
J. HOWARD LANGDON, Attorney;
C. ROGER McRAE, District Magistrate,
all in their official and individual capacities;
LARRY PETERMAN, Office of Constable,
Schrewberry Township;
STEVEN LITZELMAN, Office of Constable,
Jersey Shore Borough;
GURN WEBER, Office of Constable,
Old Lycoming Township,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS EAST LYCOMING SCHOOL DISTRICT AND ROBIN SCHULLER IN OPPOSITION

[Counsel Listed Inside Front Cover]

Washington, D.C. • THIEL PRESS • (202) 328-3286

85 pp

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(215) 540-1155
Attorney for Respondents.

COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals, Third Circuit, properly utilized and applied the relevant law on §1983 municipal liability in accordance with *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978), and in so doing, properly affirmed the District Court's Order granting Respondents' Motion for Summary Judgment?

2. Whether the United States Court of Appeals, Third Circuit, properly affirmed the District Court's Order granting Respondents' Motion for Summary Judgment and in so doing properly applied the Doctrine of Qualified immunity?

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Monell v. Dept. of Social Services, 436 U.S. 658 (1978)..... *passim*
Rizzo v. Goode, 423 U.S. 362 (1978)..... 8
Spence v. Zimmerman, 873 F.2d 256 (11th Cir. 1989) 7
Turpin v. Mailet, 619 F.2d 196 (2d Cir. 1980) 11

Statutes:

28 U.S.C. §2101(c)..... 1
28 U.S.C. §1254(1) 2
42 U.S.C. §1983..... *passim*
24 Pa. C. S. §§1-101 *et seq.* 3
24 Pa. C. S. §13-1327.....3

Rules of Court and Procedure:

Supreme Court Rule 13..... 1
Supreme Court Rule 10.....2, 9, 12
Fed. R. Civ. P. 60(b)..... 5
Fed. R. Civ. P. 56(c) 7

STATEMENT OF JURISDICTION

Petitioners have failed to comply with Supreme Court Rule 13(3) wherein the 90 day period in which a party may file a Petition for a Writ of Certiorari, ". . . runs from the date of entry of the . . . order sought to be reviewed and not from the issuance date . . ."

The Court of Appeals Order is dated November 14, 1997. (Pet. for Writ, pp. 14-15). There is no other date noted on the Order. Providing the 90 days begins to run from the date of entry of an Order, as indicated in Supreme Court Rule 13(3), the Lawveres' Petition was filed on the 91st day after the entry of the Order (February 12, 1998). Accordingly, the Petition is untimely.

There appears to be a discrepancy between Supreme Court Rule 13(1) and 13(3), where Rule 13(1) states that a petition is timely when it is filed, ". . . within 90 days after entry of the judgment." The same language appears in 28 U.S.C. §2101(c) which indicates a writ shall be, ". . . applied for within 90 days after the entry of . . . judgment." Nonetheless, reading Rule 13 sections (1) and (3) together would seem that section (3) governs section (1), in that section (3) deals specifically with the "time to file a petition. . ." In sum, a Writ of Certiorari should not issue for the foregoing reasons.

Additionally, a Petition for Rehearing can toll the 90 day filing period, unless it is a Petition for Rehearing en banc. Supreme Court Rule 13(3). Petitioners have conceded that the Petition for Rehearing below was treated as a Petition for Rehearing en banc and, as such, the 90 day filing period was not tolled. (Pet. for Writ, p. 1). The Court of Appeals Order denying the Lawveres' Motion was entered on December 22, 1997.

Alternatively, should this Honorable Court deem the Lawveres' untimely filing harmless, a review of the United States Court of Appeals' decision is appropriate pursuant to 28 U.S.C. §1254(1) and upon this Honorable Court's discretion in accordance with Supreme Court Rule 10.

COUNTER-STATEMENT OF THE CASE

Plaintiffs/Petitioners, Scott and Brenda Lawvere[1], asserted that their federally protected rights were violated by the East Lycoming School District[2] and Robin Schuller[3], through their efforts in their actions to compel compliance with the Pennsylvania Compulsory School Attendance Statute. The District Court, Senior Judge Muir granted ELSD and Robin Schuller's Motion for Summary Judgment by Order dated January 29, 1997.

On September 17, 1994, Plaintiffs, Scott and Brenda Lawvere received a letter[4] from Defendant, Robin Schuller informing them that they were in violation of the Pennsylvania Compulsory School Attendance Statute.[5] Schuller and the Lawveres met to discuss home schooling possibilities. When the Lawveres failed to comply with the Statute by filing home schooling papers or enrolling their children in the school district, *Id.*,

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[1] Hereinafter referred to as the Lawveres.

[2] Hereinafter referred to as ELSD.

[3] At the time of the incident, which forms the basis of their claim, Robin Schuller was a Principal at an elementary school within the East Lycoming School District.

[4] A true and correct copy of Schuller's letter is attached hereto as Appendix A.

[5] A true and correct copy of the Lawvere's Complaint is attached hereto as Appendix B, p. 7a.

Schuller called them on October 4, 1994, warning that they were subject to criminal charges if they did not file an enrollment certificate with the School District by October 6, 1994. (Appendix B, p. 7a). Following their failure to file the certificate, Schuller signed a criminal complaint[6] against the Lawveres alleging violation of Section 1327 of the School Code of 1949, 24 Pa. C.S. §§1-101 *et seq.*

The Lawveres entered a not guilty plea (Appendix B, p. 8a), and a hearing was held before District Magistrate C. Roger McRae on December 5, 1994. The Magistrate found them guilty and levied fines.

On or about September 8, 1995, the Lawveres, proceeding *pro se,* commenced this civil rights action pursuant to 42 U.S.C. §1983 by filing a Complaint. The Lawveres argued that the School District and Schuller violated their First Amendment rights by bringing a criminal action against them for violation of the Compulsory School Attendance Law, 24 Pa. C.S. §13-1327. (Appendix B, pp. 12a-13a). They further maintained that Schuller and the School District violated their due process rights by failing to serve them with process in the filing of the private Criminal Complaint and by failing to comply with Pennsylvania's "right to know" law. (Appendix B, p. 12a-13a). Schuller and the School District filed an Answer on October 12, 1995. Schuller and the School District moved for Summary Judgment on or about May 31, 1996.[7] Thereafter, on June 20, 1996, the Law-

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[6] A true and correct copy of the criminal complaint is attached hereto as Appendix C.

[7] A true and correct copy of Defendants' Motion for Summary Judgment and attendant Brief is attached hereto as Appendix D.

veres filed an Answer to Defendants' Motion for Summary Judgment.[8] On August 1, 1996, the Lawveres filed their own Motion for Summary Judgment. On August 15, 1996, ELSD and Robin Schuller filed a Response in Opposition to the Lawveres' Motion for Summary Judgment along with a supporting Brief.

Summary Judgment was granted on behalf of the School District on the basis that there was a complete lack of evidence with respect to whether the actions for which the Lawveres complained were carried out pursuant to a policy or custom of the District.[9] The Court went on to hold that Schuller was entitled to Summary Judgment in that there was a complete lack of evidence that her actions deviated in any way from the requirements of the Pennsylvania School Code, and that the Lawveres' remaining allegations involved alleged violations of State law which are not actionable in an action pursuant to 42 U.S.C. §1983.

On February 13, 1997, the Lawveres filed a "Motion for Rehearing" of the District Court's Order of January 29, 1997. On February 24, 1997, ELSD and Robin Schuller, among others, filed a Brief in Opposition to the Lawveres' Motion. The Lawveres filed a Motion to Strike ELSD's and Robin Schuller's Brief in Opposition. On March 18, 1997, the Lawveres filed a Reply Brief with respect to their Motion for Rehearing. The District Court

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[8] A true and correct copy of the Lawveres' Answer/Objection to Defendants' Motion for Summary Judgment and their Brief in Support thereof is attached hereto as Appendix E.

[9] A copy of the United States District Court's Order of January 29, 1997 is contained in the Lawveres' Petition for a Writ of Certiorari, Appendix, pp. 1-8, see p. 7.

treated the Lawveres' Motion for Rehearing as a Motion for Reconsideration under Fed.R.Civ.P. 60(b).[10]

Ultimately, the District Court denied the Lawveres' Motion for Reconsideration finding that their Motion was simply a restatement of their arguments previously set forth in their Brief in Opposition to ELSD's and Schuller's Motion for Summary Judgment. (Appendix F, pp. 62a-63a). The District Court also noted that, "we have thoroughly reviewed our Order of January 29, 1997, and we are convinced that we did not make an error of law." *Id.*

On April 16, 1997, the Lawveres filed a Notice of Appeal with the United States District Court for the Middle District of Pennsylvania. Subsequently, the Lawveres filed an Appellate Brief challenging the propriety of the District Court's Order. ELSD and Robin Schuller timely filed their Brief in Opposition, maintaining the integrity of the District Court Order. A Reply Brief was filed in response thereto. After consideration of the issues raised by Appellants, the Lawveres, the United States Court of Appeals for the Third Circuit affirmed the District Court's Order of March 19, 1997 in an Order entered on November 14, 1997.[11] Thereafter, the Lawveres filed a Petition for Rehearing. This Petition was treated as a Petition for Rehearing en banc.[12] On December 22,

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[10] A true and correct copy of the United States District Court's Order of March 19, 1997 is attached hereto as Appendix F. The procedural history outlined above is set out in detail in the District Court's Order.

[11] A copy of the United States Court of Appeals, Third Circuit, Order of November 14, 1997 is contained in the Lawveres' Petition for a Writ of Certiorari, pp. 14-15.

[12] A copy of the United States Court of Appeals, Third Circuit, Order of December 22, 1997 is contained in the Appendix of the Lawveres' Petition for a Writ of Certiorari, p. 9.

1997, the Court of Appeals denied Appellants' Petition for Rehearing. *Id.*

On February 12, 1998, the Lawveres filed, via United States Mail, a Petition for a Writ of Certiorari with this Honorable Court.

ARGUMENT

Petitioners, Scott and Brenda Lawvere, maintain that the Court of Appeals erred in affirming the District Court's Order granting East Lycoming School District's and Robin Schuller's Motion for Summary Judgment. Apparently, the Lawveres contend a Writ of Certiorari should issue in this case because the District Court, and the Court of Appeals in its review, somehow misapplied the standards articulated in *Monell v. Dept. of Social Services,* 436 U.S. 658 (1978), regarding the liability of municipal entities and public officials under 42 U.S.C. §1983. Petitioners further contend that the Court of Appeals' ruling purportedly conflicts with certain decisions of the other United States Court of Appeals. Essentially, the District Court found, and the Appellate Court affirmed, that the Lawveres failed to offer any evidence which would establish, ". . . that the actions of the School District were carried out pursuant to an unconstitutional policy or custom . . ." (*See* Petitioners' Appendix, p. 7).

The United States Court of Appeals, Third Circuit, properly affirmed the District Court's ruling where there was no genuine issue of material fact in dispute and the law regarding municipal liability was appropriately applied pursuant to this Court's dictates in *Monell, supra,* and its progeny. Additionally, the Court of Appeals' ruling does not conflict with the cited deci-

sions of other Circuits, as argued by the Lawveres. As such, a Writ of Certiorari should not issue in the instant case.

A. Summary Judgment Standard.

Summary Judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). However, "(t)he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). A genuine issue of material fact arises only if a reasonable jury could find for the non-moving party on that fact. *Id.* at 248. The non-movant is not given the benefit of every inference or possibility, but only of every reasonable inference. *Spence v. Zimmerman*, 873 F.2d 256, 257 (11th Cir. 1989). The non-moving party must offer sufficient evidence such that a reasonable jury could return a verdict in favor of that party. *Anderson*, 477 U.S. at 248. "If the evidence is merely colorable or is not significantly probative, summary judgment may be granted." *Id.* at 250-251. (Citations omitted). Rule 56(c) mandates the entry of Summary Judgment against a party who fails to produce evidence sufficient to establish an essential element of its case, on which he will bear the burden of proof at trial. *Celotex v. Catrett*, 477 U.S. 317, 322 (1986).

B. The Record Is Devoid Of Any Evidence That A Policy Or Custom Of The School District Resulted In A Constitutional Violation.

The District Court correctly held and the Court of Appeals properly affirmed that the Lawveres are not entitled to relief under 42 U.S.C. §1983 against the School District. It is axiomatic that there is no respondeat superior liability under §1983. *Rizzo v. Goode*, 423 U.S. 362, 377 (1978). Rather, as this Court held in *Monell, supra*, it is only "when execution of the government's policy or custom . . . inflicts the injury that the government as an entity is responsible under the §1983." *Monell*, 436 U.S. at 694. As this Court recently stated:

> Locating a "policy" ensures that a municipality is held liable only for those deprivations resulting from the decision of its duly constituted legislative body or of those officials whose acts may fairly be said to be those of the municipality as well. Similarly, an act performed pursuant to a "custom" that has not been formally approved by an appropriate decision maker may fairly subject a municipality to liability on the theory that the relevant practice is so widespread as to have the force of law.

Board of the County Commissioners of Bryan County, Oklahoma v. Jill Brown, ___ U.S. ___, ___, 117 S.Ct. 1382, 1388 (1997) (citations omitted).

A complainant must also establish that the municipal action was taken with a reckless degree of culpability and a direct causal link between the municipal action and the deprivation of federal rights. *Id.* In *City of Los Angeles v. Heller*, 475 U.S. 796 (1986), this Court held that a municipal entity cannot be held liable for a civil rights violation where there is no underlying constitutional violation by the individual officer.

In their Complaint the Lawveres did not allege that the School District had a policy or custom of unconstitutional conduct. Furthermore, the Petitioners failed to offer any such evidence in their Motion for Partial Summary Judgment, in their Response to Defendants' Motion for Summary Judgment, in their Motion for Rehearing or in their Third Circuit Appellate Brief. Clearly, the record contains no evidence from which such an inference could be drawn. Moreover, there was no underlying constitutional violation by the individual Defendant, Robin Schuller. (*See* Argument below and District Court's Order, 1/29/97). Based on the Lawveres' failure to cite any evidence that the actions of the School District were carried out pursuant to an unconstitutional policy or custom, and because the District Court itself was not aware of any unconstitutional policy or custom, the District Court granted, and the Appellate Court affirmed, Defendants' Motion for Summary Judgment as to all of the Lawveres' claims against the School District.

In their Petition for a Writ of Certiorari, the Lawveres maintain that this Honorable Court should grant their Petition pursuant to Supreme Court Rule 10(a) which provides that a Writ of Certiorari may be appropriate where, "a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter." The Lawveres cite several decisions in support of this proposition in subsections 1 and 3 of the Argument portion of their Petition for a Writ of Certiorari. (*See* Lawveres' Petition for Cert., pp. 7-8). It is unclear whether Petitioners maintain that the Third Circuit misapplied the *Monell, supra,* decision or that the *Monell* decision, in fact, conflicts with the decisions of other United States Courts of Appeals with regard to §1983 municipal lia-

bility. In either case, as discussed below, the Lawveres' reliance on the below cited cases is misplaced and inappropriate. The Court of Appeals' ruling properly affirmed the District Court's use and application of the law regarding municipal liability in a §1983 action, pursuant to this Court's dictates in *Monell.*

Initially, the Lawveres rely on *D.L. Auld Company v. Chroma Graphics Corp.*, 714 F.2d 1144 (F. Cir. 1983), in support of the proposition that the Third Circuit somehow misapplied the relevant law regarding municipal liability. The Petitioners' reliance is misplaced. In that summary judgment case, the issue was whether a patent was, in fact, valid. The Appellate Court there reviewed the appropriate law regarding summary judgment and affirmed the District Court's finding that there was no genuine issue of material fact with regard to the patent's validity. That Court did not resolve issues of material fact. Likewise, in this case, the Appellate Court determined that there was no genuine issue of material fact for the jury to resolve since the Lawveres failed to offer any evidence of an unconstitutional policy or custom. Clearly, there exists no conflict between the decision in the *D.L. Auld* case and the Third Circuit's ruling in the instant case.

Petitioners next rely on *Bowen v. Watkins,* 699 F.2d 979 (1982). (Cite incorrect as provided by Petitioners). They also report the appropriate citation to this case as *Bowen v. Watkins,* 499 F.2d 979 (1982). However, neither citation to this case is correct. The Respondents unfortunately are unable to locate the correct citation and, as such, are not able to determine how, in fact, it may conflict with the Third Circuit's ruling in this case.

The Lawveres' reliance on *Turpin v. Mailet,* 619 F.2d 196 (2d Cir. 1980) is likewise misplaced. In that case, the issue was whether an "official policy" could be inferred from informal acts or omissions of certain municipal officials and whether that plaintiff's evidence was sufficient to prove any official municipal policy with respect to the arrest on which the suit was based. After a detailed discussion of *Monell* and municipal liability, the Court of Appeals for the Second Circuit determined that the plaintiff in that case failed to establish that the defendant's arrest of plaintiff was made pursuant to any official policy on the part of the municipality there. The *Turpin* case evidences no conflict with the Third Circuit's ruling in this case, based on the Second Circuit's detailed discussion and understanding of *Monell* and its progeny and its determination that proof of an official policy was a prerequisite to a finding of liability in that case.

In addition, the Lawveres wrongly rely on *Kite v. Kelley,* 546 F.2d 334 (10th Cir. 1976). That case involved the application of the Civil Rights Act of 1871. In that case, there was no declaration of a wrongful policy. Additionally, *Kite v. Kelley* predates *Monell* and, as such, the Third Circuit's application of *Monell* in the instant case cannot conceivably conflict with the *Kite* decision.

Lastly, the Petitioners rely on *Environmental Defense Fund v. Marsh,* 651 F.2d 983 (5th Cir. 1981). Again, their reliance is misplaced. The Lawveres apparently cite this case in support of the proposition that the District Court allegedly wrongly resolved issues of material fact. (Pet. for Writ, pp. 8-9). In *Environmental Defense Fund,* that Court correctly recited the law regarding the Standard of Review in Summary Judgment Motions. Partic-

ularly, that Court noted that "the District Court should base its decision on . . . any relevant evidence offered by the parties that would be admissible at trial." *Environmental,* 651 F.2d at 991. That case in no way conflicts with the Summary Judgment Standards applied by the District Court in its initial review of Defendants' Summary Judgment Motion as evidenced in the District Court's opinion. (Petitioners' Appendix, pp. 5-6). In ruling on the propriety of the District Court's Order, the Court of Appeals for the Third Circuit certainly utilized the appropriate summary judgment law and effectively affirmed the District Court's analysis of the same. Accordingly, the Lawveres again have failed to establish any conflict between the Third Circuit's ruling and that of other Circuits.

In conclusion, the Lawveres' repeated failure to identify or to offer any relevant evidence that the School District acted pursuant to an unconstitutional policy or custom renders the Respondents' Motion for Summary Judgment appropriate. The United States District Court and the United States Court of Appeals for the Third Circuit properly recited and applied the relevant case law with regard to both Summary Judgment and municipal liability in a Section 1983 action. There exists no conflict between this Court of Appeals' decision in the instant case and the decisions, as cited by Petitioners, of other United States Courts of Appeals. (*See* Supreme Court Rules, Rule 10(a). Petitioners cannot even contend that there was an erroneous factual finding where there was absolutely no evidence offered regarding a wrongful policy or custom. Indeed, the District Court itself was aware of no unconstitutional policy or custom. (Petitioners' Appendix, p. 7). Finally, Petitioners have failed to establish how, in fact, any properly stated rule of law was misapplied.

Accordingly, the East Lycoming School District and Robin Schuller, Respondents, here respectfully request that this Honorable Court deny the Lawveres' Petition for a Writ of Certiorari, thereby affirming the Court of Appeals' Order granting Respondents' Motion for Summary Judgment.

C. The District Court Properly Applied The Concept of Qualified Immunity And Respondent, Robin Schuller Is Entitled To Qualified Immunity.

In their Petition for a Writ of Certiorari, in subsection 4 of Argument, the Lawveres contend that the District Court erred in applying the Doctrine of Qualified Immunity to the Defendants in that they allegedly acted under color of state law and violated Plaintiffs' substantive rights. Further, Petitioners assert that the District Court, and in turn, the Court of Appeals, failed to appropriately apply the "Doctrine of Immunity" by failing to consider, ". . . whether the named defendants were duly pursuing the duties under State statute without violating Plaintiffs' rights." (*See* Pet. for Writ, p. 10). Purportedly, the District Court and the Court of Appeals acted in contravention to the decision in *Allred v. Svarczkopf,* 573 F.2d 1146 (10th Cir. 1978). That case, however, predates the decisions of the Supreme Court stated below and, as such, is no longer relevant with regard to the objective versus subjective good faith criteria.

This Court held, in *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982), that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."

In *Anderson v. Creighton*, 483 U.S. 635, 640 (1987), this Court explained that to defeat immunity, it is not sufficient that the right at issue be clearly established as a general matter. The question is whether a reasonable official could have believed his conduct was lawful in light of clearly established law and the information the official possessed. 483 U.S. at 641. Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law. *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

The Court of Appeals for the Third Circuit interpreted the *Anderson* standard in *Brown v. Grabowski*, 922 F.2d 1097, 1111 (3rd Cir. 1990), *cert. denied*, 501 U.S. 1218 (1991) to require the Court to examine the specific conduct of each defendant claiming qualified immunity. Following that Rule in *Grant v. City of Pittsburgh*, 98 F.3d 116, 122 (3rd Cir. 1996), the Court instructed the trial court to carefully examine the record to establish, for purposes of summary judgment, a detailed factual description of the actions of each individual Defendant.

The District Court held that, since the provisions of the Pennsylvania School Code did not violate the First Amendment and because the Lawveres failed to offer any evidence that Robin Schuller's actions in any way deviated from the School Code, Summary Judgment was appropriate. The District Court further found that Robin Schuller was not liable with regard to the Lawveres' claims of "right to public information".

Based on the foregoing findings, the District Court never reached the issue of whether Principal Robin Schuller was entitled to qualified immunity. However, it is clear from the facts demonstrated on the record that Robin Schuller acted in compliance with her duty as a principal under the Pennsylvania School Code, and

particularly with respect to attempts to seek compliance with the Compulsory School Attendance Statute. She, therefore, is entitled to a finding of qualified immunity.[13]

CONCLUSION

For all the foregoing reasons, Respondents East Lycoming School District and Robin Schuller respectfully request that this Honorable Court deny the Lawveres' Petition for a Writ of Certiorari, thereby affirming the Court of Appeals' Order granting Respondents' Motion for Summary Judgment.

Respectfully submitted,

ANTHONY R. SHERR
MAYERS, MENNIES & SHERR
1787 Sentry Park West
Building 16, Suite 230
Blue Bell, Pennsylvania 19422
(215) 540-1155
Attorney for Respondents.

March 20, 1998

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[13]The Lawveres also claim that they were not permitted to complete discovery. First, this is factually incorrect. For instance, they make much of the failure of the Superintendent to appear at his deposition in the date noted. They fail to note, however, that his deposition was taken. Also, Rule 56(f) requires Plaintiffs to file an affidavit indicating what additional information is needed. This was not done.

APPENDIX A

EAST LYCOMING ELEMENTARY SCHOOLS
Renn Elementary School
Route #118
Lairdsville, PA 17742

Robin Schuller, Principal

September 15, 1994

Mr. and Mrs. Scott Lawvere
P.O. Box 46
Unityville, PA 17774

Dear Mr. and Mrs. Lawvere,

It has come to the East Lycoming School District's attention that you have three school aged children who are subject to the compulsory attendance provisions of the Public School Code of Pennsylvania. We understand that you currently reside in the district; however, our records show that your children are not currently registered in our schools.

We have an obligation, under the School Code, to be accountable for all district resident students. You must immediately enroll your children in the East Lycoming School District, and they must begin to attend school, or you must meet the State Board of Education adopted regulations settings forth the requirements for home instruction.

If you fail to immediately meet one of the two aforementioned requirements, this matter will be referred to the Magistrate without further notice from the school administration.

If you have any questions, please call me at 584 - 3070 between the hours of 8:00 a.m. and 4:00 p.m.

Sincerely,

/s/ Mrs. Robin Schuller
Mrs. Robin Schuller
Elementary Principal

pc: Mr. Edward Harrington, Superintendent of Schools

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Case Number: 4: CV-95-1515

Scott and Brenda Lawvere

Plaintiffs

v.

J. Howard Langdon, Attorney at Law
District Magistrate C. Roger McRae
Robin Schuller, Principal
in their individual and official capacities,
the Pennsylvania State Constables, and
the East Lycoming School District

Defendant

SUMMONS IN A CIVIL ACTION

TO:

See Complaint
J. Howard Langdon, Attorney at Law,
in his individual capacity
R. R. #1
Muncy, Pa. 17756

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon Plaintiffs

Scott & Brenda Lawvere
P.O. Box 46
Unityville, Pa. 17774

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons

upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

/s/ Mary E. D'Andrea
Clerk

September 8, 1995
Date

/s/ B. Forest
By Deputy Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Case Number 4:CV-95-1515

TRIAL JURY DEMANDED

Mr. & Mrs. Scott Lawvere

Plaintiffs

vs.

The East Lycoming School District and
The Pennsylvania State Constables
Robin Schuller, Principal
J. Howard Langdon, Attorney
and C. Roger McRae, District Magistrate
in their official and individual capacities

Defendants

COMPLAINT

COMES NOW, Plaintiffs Scott and Brenda Lawvere file their complaint against Defendants the East Lycoming School District, and the Pennsylvania State Constables; Robin Schuller, Principal for the East Lycoming School District, J. Howard Langdon, attorney for the East Lycoming School District, and District Magistrate C. Roger McRae, in their official and individual capacities, for willfully and intentionally violating Plaintiffs' rights secured by the Constitution and Bill of Rights, under the color of State law, custom, and usage, for depriving said rights and for failure, neglect, or refusal to protect Plaintiffs from said deprivation though it was within the power of Defendants to do so.

Plaintiffs' Affidavit in Support of their Complaint is incorporated and attached hereunto.

JURISDICTION

(1) This court has jurisdiction under Article III, §II of the Constitution for the United States and under 28 USC § 1331 and § 1343 (a.); it also has jurisdiction under 42 USC § 1983, and the Civil Rights Act of 1871.

(2) This action arises due to the defendants' violation of Plaintiffs' unalienable rights in the nature of Article I, Article IV, Article V, Article VI, Article XIII, and Article XIV of the Bill of Rights; the Civil Rights Act of 1871; 42 USC § 1983; and 28 USC § 1331, § 1343(a).

(3) The Plaintiffs believe and allege that at all times mentioned herein, Defendants were and/or are officers/employees of the Commonwealth of Pennsylvania and/or its' agencies. As to all acts alleged herein, all Defendants were/are public officers or agents of the Commonwealth of Pennsylvania and at all times were acting under color of law.

(4) The Plaintiffs reserve their right to amend this complaint, and add the names of other Defendants as their identities become known but which are unknown at this time. Plaintiffs demand and reserve their right to Trial by Jury of their Peers pursuant to Article VII of the Bill of Rights.

(5) This action arises for damages arising due to insidious acts of agents/employees of the Commonwealth of Pennsylvania and any other unknown individuals as their identities become known, who are being sued in their individual as well as their official capacities including but not limited to: violation of Plaintiffs' right of Freedom of Religion secured by the First Amendment; violation of Plaintiffs' rights to access of

information secured by the First Amendment; violation of Plaintiffs' rights to access the court, to due process of law and equal protection under the law secured by the Fifth and Fourteenth Amendment; violation of Plaintiffs' rights to be free from abuse of process, malicious prosecution, harassment, threats, intimidation and coercion secured by the Fourth, Fifth, Eighth, Thirteenth, and Fourteenth Amendments; and violation of Plaintiffs' rights to Trial by Jury in a quasi-criminal action as secured by the Fifth and Sixth Amendments to the Constitution.

Statement of the Case

(6) On or about 17 Sep 94, Plaintiffs received a letter from Robin Schuller, Principal in the East Lycoming School District (hereinafter known as E.L.S.D.), Renn Elementary School, alleging that they were not in compliance with the compulsory attendance provisions of the Public School Code of Pennsylvania. After meeting with Principal Schuller on or about 23 Sep 94 and School Superintendent Edward Harrington on or about 26 Sep 94, plaintiffs sent requests under Pennsylvania's Law s. 390, "Right to Know" and demanded copies of statutes, implemented and promulgated rules and regulations concerning education in the home. To date the E.L.S.D. nor its' agents/employees answered said requests; therefore it can only be presumed that such statutes, rules, or regulations do not exist.

(7) On or about 04 Oct 94, Principal Schuller called to inform Plaintiffs that criminal charges would be filed against them if they failed to file an enrollment affidavit with the E.L.S.D. by 06 Oct 94. Plaintiffs repeatedly requested written information pursuant to Pennsylvania's "Right to Know" Law, but Schuller responded that Plain-

tiffs would not receive any written response. On or about 06 Oct 94, Principal Schuller filed a private criminal complaint with Magisterial District 29-3-03, Muncy, Pa., District Magistrate C. Roger McRae (hereinafter called McRae) presiding.

(8) On or about 06 Oct 94, C. Roger McRae issued a Warrant of Arrest against Plaintiffs without issuing a summons or serving a complaint.

(9) On or about 15 Oct 94 a letter from the Pa. State Constable arrived, stating that plaintiffs had to report by Oct 19 to the District Magistrate's under threat of arrest.

(10) On or about 18 Oct 94 Plaintiffs went to the District Magistrates' office to examine and copy documents in the file, which contained the original summons papers with all copies attached. On or about 19 Oct 94 plaintiffs appeared at District Magistrates' Office to avoid arrest. McRae was not in chambers at the time Plaintiffs' appeared to answer, and his Clerk refused to accept Plaintiffs' plea of "Non-assumpsit", insisting that the only plea Plaintiffs' could enter was "guilty or not guilty". Plaintiffs were forced to plea "Not guilty" under threat, duress, and coercion, and said clerk assigned a hearing and noticed Plaintiffs.

(11) On or about 19 Oct 94 a "Petition for Removal" and "Motion to Dismiss" were mailed to J. Howard Langdon, attorney for E.L.S.D. (hereinafter called Langdon), and on or about 01 Nov 94 and 10 Nov 94, to McRae, in which the Plaintiffs objected to the use of a magistrate in an administrative action, and to request that this action be dismissed due to the fact that the Plaintiffs were not served written notice of violation pursuant to Title 24 § 13-1333; were never duly served process; were refused information by the E.L.S.D.; and that Plaintiffs' private

attorney, Langdon, was also representing E.L.S.D., a conflict of interest and fiduciary responsibility.

(12) On or about 05 Dec 94, Plaintiffs served interrogatories upon Defendant E.L.S.D. by and through its' attorney, pursuant to Pennsylvania Rules of Court for Discovery. Defendant E.L.S.D. refused to answer said interrogatories; in fact, Langdon stated that "the rules of civil procedure do not provide for discovery"

(13) On or about 05 Dec 94, the Plaintiffs attended a hearing at the District Magistrates office. McRae denied Plaintiffs' "Petition for Removal", "Motion to Dismiss", and "Motion for Enlargement of Time" without reason. McRae proceeded to trial over and above Plaintiffs' objections; Langdon used the court to conduct a discovery hearing. Plaintiffs attempted to present their arguments in defense, but were found "guilty" by McRae. Plaintiffs were never afforded their right to Trial by Jury demanded as a matter of right.

(14) On or about 29 Dec 94, Plaintiffs sent a Notice and Demand to the District Magistrate requesting: a final order and/or judgement from the 05 Dec 94 hearing; production of any signed return receipt verifying Plaintiffs received proper service; and access to their court file and docket NT -0619-94 and NT-0620-94, which had been denied them. Said documents were never provided and Plaintiffs are denied access to their court file and docket to date.

(15) On or about 04 Jan 95, Plaintiffs received a letter from J. Howard Langdon defending the position of the District Magistrate, C. Roger McRae, and advising us what we should do. Plaintiffs responded on or about 06 Jan 95 with a Judicial Notice sent to C. Roger McRae & J. Howard Langdon stating that due to the acts of E.L.S.D. and

its' employees/agents as well as those of Magistrate McRae, Plaintiffs were denied access to information and the courts; denied equal protection and due process of law; denied a fair hearing and trial, thereby prejudicing their case since Langdon not only represented E.L.S.D., but had also represented the Plaintiffs and their church; Defendants E.L.S.D, McRae, and Langdon violated Plaintiffs' rights and caused them irreparable harm since they did not and could not violate Pennsylvania Education statutes and implemented/promulgated rules and regulations.

Said Defendants were noticed of their unlawful conduct and forewarned that any further acts would be considered willful, and intentional acts of maliciousness against the Plaintiffs.

(16) On or about 11 Jan 95 Plaintiffs received a letter from J. Howard Langdon noting they did not appeal and threatening several dire legal consequences if Plaintiffs did not follow his directions.

(17) On or about 18 Jan 95 notice of indigency hearing arrived by regular mail, scheduling a hearing for 10 Feb 95, at which Plaintiffs appeared specially, and said that they could not pay the fine since they were not guilty. McRae cancelled the Hearing and scheduled another for March, which Plaintiffs could not attend. On or about 15 Mar 95 Magistrate McRae sent a letter to reschedule an Indigency Hearing.

(18) On or about 03 Apr 95, Plaintiffs sent an unsworn declaration to the District Magistrate declaring that they could not afford to pay any fines, fees, or costs.

(19) On or about 19 May 95, Pennsylvania State Constables arrived at Plaintiffs house to arrest Plaintiff Scott Lawvere, on the pretext that Plaintiff had made threatening statements to District Magistrate C. Roger McRae.

Several Constables, armed with deadly force, surrounded Plaintiffs house while Plaintiff Brenda Lawvere answered the door and explained that Plaintiff Scott Lawvere was not at home, but rather was at work. She further explained that Mr. Lawvere has never threatened anyone, and being a God fearing individual would never perform such an unconscionable act.

While in conversation with the Constables, one of them raised a loaded shotgun toward the Plaintiff as if to shoot, threatening the life and safety of the Plaintiff. When the Constables did not find Plaintiff Scott Lawvere at home, they proceeded to his place of employment where they took him into custody and transported him to District Magistrate McDermott.

At the Magistrate's office Plaintiff learned that McRae had issued a Warrant of Arrest for failure to appear at an Indigency Hearing, but no Warrant of Arrest was issued for allegedly threatening McRae. Magistrate McDermott forced Plaintiff to pay collateral, or go to jail. A hearing date had been prearranged for 22 May 95 at Magistrate McRae's office.

(20) At the Indigency hearing on or about 22 May 95, Magistrate C. Roger McRae explained that he wanted money from the Plaintiffs for fines that he had levied at the original hearing of 05 Dec 94, and demanded that the fines be paid or Plaintiff would be thrown in jail. When trying to explain that such demands amounted to Peonage, McRae demanded payment of fines under threat of arrest. Plaintiffs Scott Lawvere asked if paying such fine "under threat, duress, and coercion" to avoid arrest would satisfy the court, and upon McRae's affirmation, Plaintiffs paid the fines so noting the conditions on their check.

CLAIMS UPON WHICH RELIEF CAN BE GRANTED

FIRST CLAIM

(21) E.L.S.D. did violate Plaintiffs' rights to practice their deeply held spiritual convictions secured by the First Amendment in the Bill of Rights, Constitution For the Commonwealth of Pennsylvania, and outlined in P.L. 97-280, by infringing upon their rights to, and interfering with their obligations to teach their children pursuant to Biblical ordinances. E.L.S.D. brought a criminal action against the Plaintiffs for allegedly violating 24 P.S. § 13-1327, Compulsory School Attendance. The promulgated and implemented rules and regulations for Title 24 P.S. § 13-1327 make no provision for teaching in the home, nor does the Pennsylvania Code make provision for criminal prosecution. Plaintiffs formally noticed Defendant E.L.S.D. in writing of the aforementioned abuses; therefore, E.L.S.D. willfully and voluntarily, without legislative authority, abused process and maliciously prosecuted the Plaintiffs causing them irreparable harm.

The E.L.S.D. prosecuted the Plaintiffs and labeled them as criminals as a result of Plaintiffs' good faith beliefs to "study, follow, and apply the scriptures as outlines in Scripture and reiterated in federal law. As a result of the unlawful actions of E.L.S.D. and its' employees/agents, Plaintiffs have been subjected to malicious prosecution, abuse of process, harassment, threats, intimidation, humiliation, psychological and physical damages.

SECOND CLAIM

(22) E.L.S.D. did violate Plaintiffs' rights to due process of law as secured by the Fifth and Fourteenth Articles

of the Bill of Rights, and their rights to be free from abuse of process and malicious prosecution secured by the Fifth and Fourteenth Articles of the Bill of Rights. E.L.S.D. never served Plaintiffs with process pursuant to Pennsylvania law and Pennsylvania Rules of Court.

Further, E.L.S.D. refused to answer Plaintiffs' requests for public information under Pennsylvania's "Right to Know Law", as well as Plaintiffs' interrogatories in Docket Nos. NT-0619-94 and NT-0620-94. As a result of the actions of E.L.S.D. and its' employees/agents under color of state law, Plaintiffs' rights to have access to public information to prepare their defense and rights to due process were infringed and violated causing them irreparable harm.

THIRD CLAIM

(23) Principal Robin Schuller, under color of state law, as an agent of the E.L.S.D., did violate federal law and Plaintiffs' rights secured by the First Amendment of the Bill of Rights, to practice their deeply held spiritual convictions in their good faith belief to practice God's Laws, by filing a private criminal complaint, thereby interfering in their family life and obligations pursuant to Biblical ordinance, stating they allegedly violated Pennsylvania Statute 24 P.S. § 1327. Plaintiffs believe this malicious abuse was taken to harass the Plaintiffs in order to coerce them to violate their Spiritual Beliefs by enrolling them in public school, over and above their objections and Divine Law, so that E.L.S.D. might receive State and Federal funds for E.L.S.D.'s enrolled pupils.

Principal Schuller also violated Plaintiffs' rights of access to information by refusing to comply with Pennsylvania's "Right to Know Law", and refusing to answer Plaintiffs' requests for public information regarding legis-

lative authority, statutes, promulgated rules and regulations concerning their alleged violation of the Public School Code. Denying Plaintiffs access to this information has caused them considerable damage and has prejudiced their case.

FOURTH CLAIM

(24) Attorney J. Howard Langdon, attorney for E.L.S.D., who had a fiduciary responsibility to Plaintiffs as their attorney and as their church's attorney, acted under color of state law and prejudiced Plaintiffs due to conflict of interest. Attorney Langdon could and should have known that personal knowledge of the Plaintiffs and their family, and since Attorney Langdon's wife works for the E.L.S.D., to represent E.L.S.D. and prosecute the Plaintiffs was a conflict of interest. As a result of such conflict of interest, Plaintiffs have suffered damage including but not limited to violation of their rights to equal protection under the law and due process of law as a matter of right secured by the Fifth and Fourteenth Articles to the Bill of Rights.

FIFTH CLAIM

(25) District Magistrate C. Roger McRae, under color of state law did violate Plaintiffs' rights secured by the Fifth and Fourteenth Articles of the Bill of Rights, by denying Plaintiffs access to court files dockets NT-0619-94 and NT-0620-94 in which they were named as Defendants. When Plaintiffs requested said court files, Magistrate McRae told Plaintiffs they would have to "subpoena" this information in order to prepare their defense. District Magistrate McRae could and should have known that denying Plaintiffs access to files violated his Oath of Office and Plaintiffs' rights to due process and equal pro-

tection of the law under the Fifth and Fourteenth Articles of the Bill of Rights and thereby prejudiced their case.

Further, Plaintiffs at all times therein demanded and were denied a trial by jury of their peers as a matter of right secured by the Fifth and Sixth Articles of the Bill of Rights.

SIXTH CLAIM

(26) The Pennsylvania State Constables and its employees/agents acting on non-existent complaints, did harass, threaten, and assault Plaintiff Brenda Lawvere by pointing loaded weapons at her person, upon Plaintiffs property in front of Plaintiffs' children, using a pretext of alleged "threats", hence violating her rights secured by the Fourth Article of the Bill of Rights to be secure in her person and her property.

Pennsylvania State Constables did arrest Plaintiff Scott Lawvere at his place of work based upon a warrant issued by Magistrate McRae, but he was never informed of the reason for his arrest nor was he informed of his Constitutional Rights. As a result of the Actions of the State Constables, under color of state law, Plaintiffs have suffered humiliation, emotional distress, anxiety, and now fear law enforcement officers.

WHEREFORE, *for the First Cause of Action,* wherein the East Lycoming School District did violate the Plaintiffs First Amendment Rights by infringing upon their practice of deeply held Spiritual beliefs and as a result of the unlawful actions of the East Lycoming School District and its' employees/agents subjecting Plaintiffs to malicious prosecution, abuse of process, harassment threats, intimidation, humiliation, psychological and

physical damages, the Plaintiffs, Scott and Brenda Lawvere, pray for $1,000,000.00.

For the *Second Cause of Action,* wherein the East Lycoming School District did violate Plaintiffs' right to due process as secured by the Fifth and Fourteenth Articles of the Bill of Rights, and their right to be free from abuse of process and malicious prosecution secured by the Fifth and Fourteenth Articles of the Bill of Rights, and for refusing Plaintiffs access to public information as secured by the First Article of the Bill of Rights, the Plaintiffs, Scott and Brenda Lawvere, pray for $500.000.00.

For the *Third Cause of Action,* wherein Principal Robin Schuller, under color of state law, as an employee/agent of E.L.S.D. did violate Plaintiffs' rights secured by the First Amendment of the Bill of Rights to practice their deeply held spiritual convictions, and did violate Plaintiff's rights of access to public information as secured by the First Amendment of the Bill of Rights, the Plaintiffs, Scott and Brenda Lawvere, pray for $250,000.00 in her professional capacity and $15,000.00 in her individual capacity.

For the *Fourth Cause of Action,* wherein attorney J. Howard Langdon, attorney for E.L.S.D., who had a fiduciary responsibility to Plaintiffs as their attorney and as their church's attorney, acting under color of state law and prejudicing Plaintiffs due to conflict of interest, and as a result of such conflict of interest, Plaintiffs having suffered damage including but not limited to violation of their rights to equal protection under the law and due process of law as a matter of right secured by the Fifth and Fourteenth Articles to the Bill of Rights, the Plaintiffs, Scott and Brenda Lawvere, pray for such sanctions as the court deems appropriate, $100,000.00 in his official capacity, and $25,000.00 in his individual capacity.

For the *Fifth Cause of Action,* wherein District Magistrate C. Roger McRae, under color of state law, did violate Plaintiffs' rights secured by the Fifth and Fourteenth Articles of the Bill of Rights, by denying Plaintiffs access to court files and dockets in which they were named Defendants, violating his Oath of Office, and did deny Plaintiffs a trial by jury of their peers as a matter of right secured by the Fifth and Sixth Articles of the Bill of Rights, Plaintiffs, Scott and Brenda Lawvere, prays pursuant to Fed. R. Civ. P. Rule 62(f), for an injunction against said violation of rights of due process and equal protection under the law, and violation of the right to a jury trial; and further, Scott and Brenda Lawvere requests a recusal of Defendant Magistrate C. Roger McRae from further proceedings in regards to the Plaintiffs, such sanctions as this court deems appropriate, and a written public apology.

For the *Sixth Cause of Action,* wherein The Pennsylvania State Constables and its' employees/agents acting on non-existent complaints, did harass, threaten, and assault Plaintiff Brenda Lawvere by pointing loaded weapons at her person, upon Plaintiffs property, violating her rights secured by the Fourth Article of the Bill of Rights to be secure in her person and her property, and did arrest Plaintiff Scott Lawvere, but never informed him of the reason for his arrest nor was he informed of his Constitutional Rights; and as a result of the actions of the State Constables, under color of state law, Plaintiffs

having suffered humiliation, emotional distress, anxiety, and now fear law enforcement officers, the Plaintiffs, Scott and Brenda Lawvere, pray for such sanctions as this court deems appropriate and $50,000.00.

Respectfully Submitted,

/s/ Scott & Brenda Lawvere
/s/ Ambassadors for Christ

Scott & Brenda Lawvere
Ambassadors for Christ
c/o P.O. Box 46
Unityville, Pa. 17774
717-458-4522

APPENDIX C

[SEAL]
A 17315

District Justice
Magisterial District No. 29-3-03
46 South Main Street
Muncy, PA 17756

Complaint Number

Year Type Number

Complaint Numbers if Other Participants

Incident Number UCR No. OTN

District Attorney's Office ☐Approved ☐Disapproved because:

COMMONWEALTH OF PENNSYLVANIA
Defendant

VS.

Name and Address: Mr. and Mrs. Scott Lawvere
P.O. Box 46
Unityville, PA 17774

R.S.A.
A.K.A.

_____ _____

(Issue Date) *(Signature*

I, Robin Schuller

(Name of Affiant)

of East Lycoming School District

(identify department or agency represented and political subdivision)

residing at _____
do hereby state:

(1) ☒ I accuse the above named defendant, who lives at the address set forth above, or,

☐ I accuse an individual whose name is unknown to me but who is described as _____

☐ his nickname or popular designation is unknown to me and, therefore, I have designated him herein as John Doe; with violating the penal laws of the Commonwealth of Pennsylvania at Lairdsville

(Place - Political Subdivision)

in Lycoming County on or about 8/30, 8/31, 9/1, 9/2, 9/6, 9/7, 9/16, 9/19, 9/20, 9/21, 9/22, 9/23, 9/26, 9/27, 9/28, 9/29, 9/30, 10/3, 10/4, 10/5, 10/6/94

Participants were *(if there were participants, place their names here, repeating the name of above defendant):*

2) The acts committed by the accused were:

ILLEGAL SCHOOL ABSENCES:

In that they did, as parents of a child between the ages of eight and 17 (inclusive), name unknown, permit this child to be illegally absent from school on all of the above said dates which were all legal school attendance days.

all of which were against the peace and dignity of the Commonwealth of Pennsylvania and contrary to the Act

of Assembly, or in violation of 1327 (Section) and _____ (Sub - section) of the Act of School Code of 1949 as further amended

of the _____ Ordinance of _____

(Political Sub - division)

3) I ask that a warrant of arrest or a summons be issued and that the accused be required to answer the charges I have made.

4) I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa. C. S. §4904) relating to unsworn falsification to authorities.

October 6 , 19 94 /s/ Robin B. Schuller

(Signature of Complainant)

AND NOW, on this date 10/6 , 19 94, I certify the complaint has been properly completed and verified and that there is probable cause for issuance of process.

29-3-03

(Magisterial District)

/s/ C. Roger McRae (SEAL)

(Issuing Authority)

ADDITIONAL COPY - SEE REVERSE SIDE
FOR WAIVER AND FOOTNOTES

APPENDIX D

[Filed May 31 1996]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 4:CV-95-1515

JUDGE MALCOLM MUIR

SCOTT and BRENDA LAWVERE,
Plaintiffs,

v.

EAST LYCOMING SCHOOL DISTRICT,
THE PENNSYLVANIA STATE CONSTABLES,
ROBIN SCHULLER,
J. HOWARD LANGDON,
and
DISTRICT MAGISTRATE C. ROGER MCRAE,
Defendants.

EAST LYCOMING SCHOOL DISTRICT
AND ROBIN SCHULLER'S
MOTION FOR SUMMARY JUDGMENT

AND NOW come defendants, East Lycoming School District and Robin Schuller in her individual and official capacities, by and through their counsel, Scherr, Joffe & Zuckerman, P.C., and pursuant to Fed. R. Civ. P. 56, hereby move this Honorable Court to enter Summary Judgment in their favor. In support of their Motion, defendants state:

1. Plaintiffs, Scott Lawvere and Brenda Lawvere, commenced this action by filing a Complaint on or about September 8, 1995 against, *inter alia,* moving defendants herein, East Lycoming School District ("School District") and Robin Schuller ("Schuller"), elementary school principal of the School District.

2. Plaintiffs reside in the School District. Court Order dated January 24, 1996, p. 3.

3. Plaintiffs have school age children. *Id.*

4. Plaintiffs have never enrolled their children in a home schooling program or in the school district. (Scott Lawvere N.T.,[1] p. 80).

5. By way of letter dated September 15, 1994, Schuller informed plaintiffs that they were in violation of the Pennsylvania school attendance statute.[2]

6. Schuller thereafter met with the plaintiffs to discuss home schooling possibilities. (Schuller N.T.[3], p. 9).

7. When the Lawveres did not file a home schooling certificate or enroll their children in school, Schuller informed them in a telephone call on October 4, 1994 that they were subject to criminal charges if they did not comply with the attendance law by October 6, 1994. (Schuller N.T., p. 9; Complaint at ¶ 7).

8. When the Lawveres did not enroll the children or file a home schooling certificate, Schuller signed a crim-

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[1] A true and correct copy of the notes of Mr. Lawvere's deposition testimony is attached hereto as Exhibit A.

[2] A true and correct copy of the letter is attached hereto as Exhibit B.

[3] A true and correct copy of Schuller's deposition testimony is attached hereto as Exhibit C.

inal complaint against them, alleging violation of §1327 of the School Code of 1949.[4]

9. A hearing on the criminal charge, to which plaintiffs pled not guilty, was held before defendant, District Magistrate C. Roger McRae on December 5, 1994. (Complaint at ¶¶10, 13).

10. The Magistrate found the Lawveres guilty. (Complaint at ¶13, Scott Lawvere N.T., p. 79).

11. In their Complaint, plaintiffs seek relief pursuant to 42 U.S.C. §1983 for alleged violations of their civil rights.

12. Plaintiffs allege that Schuller and the School District violated their First Amendment rights by bringing the criminal action against them. (Complaint at ¶¶21, 23).

13. Plaintiffs further allege that movants violated their due process rights by failing to serve them with process in the filing of the criminal complaint and by maliciously prosecuting them. (Complaint at ¶21, 22, 23).

14. Plaintiffs further allege that movants violated their due process rights by failing to comply with Pennsylvania's "right to know law." (Complaint at ¶22, 23).

15. The School District has an obligation to enforce compliance with the compulsory school attendance statute.

16. The compulsory school attendance law comports with the First Amendment of the United States constitution.

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[4] A true and correct copy of the criminal complaint is attached hereto as Exhibit D.

17. The service of the criminal complaint comported with the Pennsylvania Rules of Criminal Procedure.

18. The violation of a state law does not give rise to liability under 42 U.S.C. §1983.

19. The finding of guilt in the underlying criminal matter precludes §1983 liability for malicious prosecution.

20. Neither Schuller nor the School District committed any act which deprived plaintiffs of any federally guaranteed right.

21. There is no dispute about any material fact.

22. Schuller and the School District are entitled to judgment as a matter of law.

WHEREFORE, defendants Robin Schuller and East Lycoming School District respectfully request this Honorable Court to enter Summary Judgment in their favor and dismiss them from this matter with prejudice.

Respectfully submitted

SHERR, JOFFE & ZUCKERMAN, P.C.

BY: /s/ Deborah Z. Winfield
Anthony R. Sherr
Deborah Z. Winfield
Attorneys for Defendants,
Robin Schuller and
East Lycoming School District

May 30, 1996

[Filed Jun 5 1996]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 4:CV-95-1515

JUDGE MALCOLM MUIR

SCOTT and BRENDA LAWVERE,
Plaintiffs,

v.

EAST LYCOMING SCHOOL DISTRICT,
THE PENNSYLVANIA STATE CONSTABLES,
ROBIN SCHULLER,
J. HOWARD LANGDON,
and
DISTRICT MAGISTRATE C. ROGER MCRAE,
Defendants.

DEFENDANTS, EAST LYCOMING SCHOOL DISTRICT AND ROBIN SCHULLER's, MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

I. *INTRODUCTION*

In this purported civil rights action, plaintiffs allege that they were deprived of their constitutional rights by the East Lycoming School District's actions to compel compliance with Pennsylvania's compulsory school attendance statute. The record demonstrates that neither Schuller nor East Lycoming School district engaged in

any conduct giving rise to liability. Moving defendants are entitled to summary judgment in their favor.

II. *HISTORY OF THE CASE*

On September 17, 1994, plaintiffs Scott Lawvere and Brenda Lawvere received a letter[1] from defendant Robin Schuller ("Schuller"), elementary school principal for defendant East Lycoming School District ("School District"), informing them that they were in violation of the Pennsylvania compulsory school attendance statute. (Complaint at ¶ 6). Schuller and the plaintiffs met to discuss home schooling possibilities. (Schuller N.T.[2], p. 9). When the Lawveres failed to comply with the statute by filing home schooling papers or enrolling their children in the school district, (*Id.*), Schuller called them on October 4, 1994, warning that they were subject to criminal charges if they did not file an enrollment certificate with the School District by October 6, 1994. (Complaint at ¶ 7). Following their failure to file the certificate, Schuller signed a criminal complaint[3] against the Lawveres alleging violation of section 1327 of the School Code of 1949, 24 Pa. C.S. § § 1-101 *et seq.*

The Lawveres entered a not guilty plea (Complaint at ¶ 10), and a hearing was held before District Magistrate C. Roger McRae on December 5, 1994. The Magistrate found them guilty and levied fines. (Complaint at ¶ ¶ 13,

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[1] A true and correct copy of Schuller's letter is attached to defendants' Motion as Exhibit B.

[2] A true and correct copy of the notes of Ms. Schuller's deposition testimony is attached to defendants' Motion as Exhibit C.

[3] A true and correct copy of the criminal complaint is attached to defendants' Motion as Exhibit D.

20; Scott Lawvere N.T.[4] p. 79). The Lawveres never appealed from the conviction.

On or about September 8, 1995, plaintiffs, proceeding *pro se,* commenced this civil rights action pursuant to 42 U.S.C. §1983 by filing a Complaint. The plaintiffs contend that the School District and Schuller violated their First Amendment rights by bringing a criminal action against them for violation of the Compulsory School Attendance Law, 24 Pa. C.S. §13-1327. (Complaint at ¶¶21, 23). They further contend that the Schuller and the School District violated their due process rights by failing to serve them with process in the filing of the private criminal complaint and by failing to comply with Pennsylvania's "right to know" law. (Complaint at ¶¶22, 23). Schuller and the School District filed an answer on October 12, 1995. Schuller and the School District now move for Summary Judgment.

III. *STATEMENT OF QUESTIONS INVOLVED*

A. Whether plaintiffs can show that Schuller and the School District did anything to violate their First Amendment rights?

(Suggested answer in the negative).

B. Whether plaintiffs can show that Schuller and the School District did anything to violate their due process rights?

(Suggested answer in the negative).

C. Whether the undisputed material facts establish that Schuller is entitled to qualified immunity?

(Suggested answer in the affirmative).

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[4] A true and correct copy of the notes of Mr. Lawvere's deposition testimony is attached to defendants' Motion as Exhibit A.

IV. *ARGUMENT*

A. *SUMMARY JUDGMENT STANDARD*

Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). "The mere existence of some alleged factual dispute between the parties' will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). A genuine issue of material fact arises only if a reasonable jury could find for the non-moving party on that fact. Id. at 248. The non-movant is not given the benefit of every inference or possibility, but only of every reasonable inference. *Spence v. Zimmerman*, 873 F.2d 256, 257 (11th Cir. 1989). The non-moving party must offer sufficient evidence such that a reasonable jury could return a verdict in favor of that party. *Anderson*, 477 U.S. at 248. "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Id. at 250-51. (citations omitted). Rule 56(c) mandates the entry of summary judgment against a party who fails to produce evidence sufficient to establish an essential element of its case, on which he will bear the burden of proof at trial. *Celotex v. Catrett*, 477 U.S. 317, 322 (1986).

In this matter, the record evidence demonstrates that plaintiffs are unable to establish essential elements of their claims against moving defendants, who are entitled to the entry of summary judgment in their favor.

B. *THE SCHOOL DISTRICT AND SCHULLER DID NOT VIOLATE PLAINTIFFS' FEDERAL RIGHTS.*

To prevail in this action, plaintiffs must demonstrate that defendants deprived them of a right secured by the Constitution or laws of the United States. *Shaw by Strain v. Strackhouse*, 920 F.2d 1135, 1142-43 (3d Cir. 1990). Record evidence demonstrates that neither Schuller nor the School District deprived plaintiffs of any constitutional rights.

1. *FIRST AMENDMENT CLAIM*

The Pennsylvania School Code of 1949, 24 Pa. C.S. §§1-101 *et seq*, provides that every compulsory school age child must attend a day school. 24 Pa. C.S. §13-1327(a). "Compulsory school age" is defined as the period of a child's life from the time the child's parents elect to have the child enter school, which shall be not later than at the age of eight (8) years, until the age of seventeen (17) years. 24 Pa. C.S. §13-1326. The parents or guardians of compulsory school age children are required to send such children to a day school. §13-1327(a). The statute permits enrollment in a school operated by a church or religious body. 24 Pa. C.S. §13-1327(b). Alternatively, the Code provides that a home education program conducted by a parent or guardian complies with its attendance requirements. 24 Pa. C.S. §13-1327(d). The requirements for pursuing a home schooling program are set forth at 24 Pa. C.S. §13-1327.1. Prior to the commencement of the program, and annually thereafter, the parents must file a notarized affidavit with the school superintendent setting forth certain information about the home schooling program. 24 Pa. C.S. §13-1327.1(b)(1).

In addition, the School Code mandates that it is the duty of school district employees to enforce the attendance provisions. A school district employeee who fails to comply is subject to penalty. §13-1355. Section 13-1354 states:

> It shall be the duty of every principle or teacher of a public school to report immediately to the attendance officer, district superintendent, or secretary of the board of school directors, the names of all children in the list furnished to him who have not appeared for enrollment . . . . Such person shall thereupon serve upon the parent, guardian, or other person in parental relation to such children unlawfully absent from school, the written notice hereinbefore provided, and if shall appear that, within three (3) days thereafter, any child parent, guardian, or other person in parental relation shall have failed to comply with the provisions of this act, the superintendent, attendance officer, or secretary of the board of school directors, in the name of the school district, shall proceed against the person so offending, in accordance with the provisions of this act.[5]

It is well established that the compulsory attendance provisions of the School Code of 1949 do not interfere

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[5]The procedure and penalties for non-compliance are set forth at §13-1333:

> Every parent, guardian, or person in parental relation, having control or charge of any child or children of compulsory school age, who shall fail to comply with the provisions of this act regarding compulsory attendance, shall on summary conviction thereof, be sentenced to pay a fine . . . . Before any proceedings are instituted against any parent, guardian or person in parental relation, for failure to comply with the provisions of this act, the district superintendent, attendance officer, or secretary of the board of school directors, shall give the offending person three (3) days written notice of such violation.

with constitutional guarantees. *Jeffry v. O'Donnell*, 702 F. Supp. 516 (M.D. Pa. 1988); *Com. v. Smoker*, 177 Pa. Super. 435, 110 A.2d 740 (1955); *Com. v. Bey*, 166 Pa. Super. 136, 70 A.2d 693 (1950).

Notwithstanding the statutory provisions and the fact that the Code comports with constitutional guarantees, plaintiffs assert that Schuller and the School District violated their First Amendment right of freedom of religion by bringing the criminal action against them. Plaintiffs concede that they have never enrolled their children in the school district schools or in a home schooling program. Thus, they were in violation of the School Code in September, 1994.

Ms. Schulller complied with her statutory duty by notifying the Lawveres on September 15, 1994, that they were in violation of the Code. She was also duty-bound, pursuant to §13-1354, to sign the criminal complaint against the plaintiffs. This matter is in essence a challenge to the constitutionality of the compulsory attendance provisions of the School Code. However, Schuller engaged in no conduct giving rise to constitutional liability. She cannot be liable for enforcing a constitutionally valid statute.[6]

Plaintiffs are not entitled to relief under 42 U.S.C. §1983 against the School District. In its landmark decision of *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978), the United States Supreme Court squarely held "that a local government may not be sued under §1983 for an injury inflicted solely by its employ-

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[6]There is absolutely no evidence that Schuller was acting in any capacity other than as the elementary school principal. Thus, the claims against her in her individual capacity must be dismissed.

ees or agents. Instead, it is when execution of the Government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the Government as an entity is responsible under §1983". The Court further held "Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused the Constitutional tort." 436 U.S. at 691.

In *City of Los Angeles v. Heller*, 475 U.S. 796 (1986), the United States Supreme Court held that a municipal entity cannot be held liable for a civil rights violation where there is no underlying Constitutional violation by the individual officer. In *Williams v. Borough of West Chester*, 891 F.2d 458, 467 n.14 (3d Cir. 1989), the Third Circuit Court of Appeals noted that where a plaintiff's claim focuses on the harm due to the actions of municipal employees, rather than by harm directly traceable to a municipal policy itself, municipal liability claims must be dismissed where the individual employee is exonerated. *See also Simmons v. Philadelphia*, 947 F.2d 1042, 1063 (3d Cir. 1991).

In their complaint, plaintiffs did not allege that the School District had a policy or custom of unconstitutional conduct, and the record contains no evidence from which such an inference could be drawn. Moreover, there was no underlying constitutional violation by the individual defendant. Accordingly, plaintiffs' claims against the School District must be dismissed.

2. *DUE PROCESS VIOLATIONS*

Plaintiffs allege that movants violated their due process rights by subjecting them to malicious prosecution and abuse of process. To prevail on a claim for malicious

prosecution, plaintiffs must prove that the underlying prosecution was terminated in favor of the accused. *Losch v. Borough of Parkesburg,* 736 F.2d 903, 907 (3d Cir. 1984). It is undisputed that the Lawveres were found guilty of the underlying charges. Their malicious prosecution claim fails.

Plaintiffs' claim that movants' alleged abuse of process deprived them of due process is similarly without support in the record. Abuse of process occurs where the party employes it for some unlawful object, not the purpose which it is intended by the law to effect; in other words, a perversion of it. *Jennings v. Shuman,* 567 F.2d 1213, 1217 (3d Cir. 1977). The plaintiff must demonstrate an ulterior motive for the defendants' actions and a use of the process for a purpose other than that for which it was designed. *Harvey v. Pincus,* 549 S. Supp. 332, 340 (E.D. Pa. 1982). Instantly, the record is devoid of evidence which would establish that Schuller signed the criminal complaint for any ulterior motive, or that she did so for any other purpose than to compel the Lawvere childrens' attendance at some type of state approved schooling. Plaintiffs cannot sustain their summary judgment burden with respect to their abuse of process claim.

Plaintiffs seek to recover damages for movants' alleged failure to comply with Pennsylvania's "right to know law," presumably 65 Pa. C.S. §66.1 *et seq.* Even assuming the truth of their factual allegations, 42 U.S.C. §1983 does not grant a cause of action for violation of state statutes. *See Shaw by Strain v. Strackhouse, supra.* Moreover, should the Court construe this claim as a state law claim, plaintiffs are not entitled to damages under the statute. The remedy for a citizen denied rights under the law must appeal from that denial to the court of com-

mon pleas, which may order disclosure if deemed proper. 65 Pa. C.S. §66.4. The appeal process is the exclusive remedy for a person whose request for examination and inspection of public records is denied. *Wiley v. Woods*, 393 Pa. 341, 141 A.2d 844 (1958). Defendants are entitled to summary judgment on plaintiffs' claims for damages pursuant to the "right to know" law.

Finally, plaintiffs allege that they were deprived of due process by the School District's failure to properly serve them with the complaint. However, Mr. Lawvere admitted that it was the district magistrate, not the School District, who violated the rules of criminal procedure with respect to service. (Lawvere N.T., p. 60). The record evidence establishes that movants are not liable for this alleged due process violation.

C. *MS. SCHULLER IS ENTITLED TO QUALIFIED IMMUNITY.*

Even if this Court determines that Ms. Schuller is not entitled to summary judgment on grounds that there was no constitutional deprivation, she is entitled to qualified immunity from this suit. See *Mitchell v. Forsyth*, 472 U.S. 511, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985) (qualified immunity is an immunity from suit rather than a mere defense to liability); *Gooden v. Howard County*, 954 F.2d 960 (4th Cir. 1992) (basic purpose of qualified immunity is to spare individual officials the burdens and uncertainties of standing trial in those instances where their conduct would strike an objective observer as falling within the range of reasonable judgment).

The Supreme Court held, in *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982), that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does

not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow* redefined the doctrine of qualified immunity of government officials and made the standard one of objective good faith on the part of the officials, rather than a subjective good faith test. The Court held:

> . . . a government official performing discretionary functions, generally are shielded from liability for civil damages *in so far as the conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.*

Id. at 18. (emphasis added). This standard is to be narrowly construed in favor of the defendants. *Id.* Qualified immunity provides protection to all but the plainly incompetent or those who knowingly violate the law. *Malley v. Briggs*, 475 U.S. 335 (1986). In *Anderson v. Creighton*, 483 U.S. 635, 640 (1987), the Court explained that the right the official is alleged to have violated must have been "clearly established" in the context of the particular facts and circumstances. That is, the question is whether a reasonable official could have believed her conduct was lawful in light of clearly established law and the information the official possessed. 483 U.S. at 641. The question of qualified immunity is a question of law for the Judge to determine. *Czurlanis v. Albanese*, 721 F.2d 98, 108 (3d Cir. 1983).

Instantly, a reasonable school principal in Schuller's position could have believed that her conduct in signing the criminal complaint was lawful. As discussed, it has been held that the compulsory attendance statute is constitutional. Schuller was statutorily obligated to proceed against the Lawveres. There is no record evidence which suggests that she is not immune from plaintiffs' claims.

V. *CONCLUSION*

For all the foregoing reasons, Robin Schuller and the East Lycoming School District respectfully request this Honorable Court to grant their Motion for Summary Judgment and dismiss them from this matter with prejudice.

Respectfully submitted,

SHERR, JOFFE & ZUCKERMAN, P.C.
BY: /s/ Anthony R. Sherr
Anthony R. Sherr
Attorney for Defendants,
East Lycoming School District
and Robin Schuller

June 4, 1996

[Certificate Of Service Omitted In Printing]

APPENDIX E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Case Number 4:CV-95-1515

Complaint Filed 9/8/95

(Judge Muir)

Mr. & Mrs. Scott Lawvere

Plaintiffs

vs.

The East Lycoming School District
and The Pennsylvania State Constables
Robin Schuller, Principal
J. Howard Langdon, Attorney
and C. Roger McRae, District Magistrate
in their official and individual capacities

Defendants

PLAINTIFFS' OBJECTION IN OPPOSITION TO
EAST LYCOMING SCHOOL DISTRICT
AND ROBIN SCHULLER'S
MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiffs Scott and Brenda Lawvere, to submit their Objection in Opposition to East Lycoming School District and Robin Schuller's Motion for Summary Judgement pursuant to the Federal rules of Civil Procedure and Local Rule 7.4. Plaintiffs' memorandum of law is incorporated herein.

1. In regards to Defendants East Lycoming School District (hereinafter known as Defendant District) and Robin Schuller's (hereinafter known as Defendant Schuller) paragraph 1, it is an undisputable fact that Plaintiffs filed a Title 42, §1983 civil rights action wherein the School District and Schuller, in her official and individual capacities, were named Defendants.

2. Plaintiffs' object. In response to *Defendants' paragraph 2 and 3,* Defendant District and Schuller are misquoting and twisting the Court's Order of January 24, 1996. In its order of January 24, 1996, *the Court was quoting Defendant Langdon's* Statement of Material Facts wherein Defendant Langdon alleged Plaintiffs had "three school aged children" and that Plaintiffs "reside within the East Lycoming School District."

The Court has not made a judicial determination that the Plaintiffs did reside within the body politic known as the East Lycoming School District or that Plaintiffs had three school-aged children.

3. In response to *Defendants' paragraph 4,* Plaintiffs are not required to enroll their children in a home education program. 24 P.S. §13-1327.1 states that "home education programs" are considered a *public school* "under provisions of this act." Plaintiffs cannot find and Defendants have failed to show that children are required to be "enrolled" in public school. [See attached copy of 24 P.S. §13-1327.1 - Home Education Program]. (see Plaintiffs attached exhibit "AU") (Defendants' exhibits are not clearly marked; exhibit "A" is not attached.)

4. Regarding *Defendants' paragraph 5,* Defendants have never shown that Plaintiffs have "school aged children" that are "required" to be enrolled in public school. Further, Defendants have never offered any evidence that Plaintiffs have violated compulsory attendance laws.

Defendants' exhibits are not clearly marked; the alleged "exhibit A", should be "exhibit B" as referenced. No exhibit marked "B" is attached.

5. In response to *Defendants' paragraph 6*, Defendants' exhibits are not clearly marked; it is presumed the unmarked exhibit is "C". Plaintiff Scott Lawvere did meet with Principal Robin Schuller on September 23, 1994, to come to an understanding of the complaint Defendant School District had received against the Plaintiffs and what could be done to resolve any problems. Defendant Schuller was *without authority* to resolve any disputed issues and referred the Plaintiffs to Edward Harrington, District Superintendent. [See Letter to Robin Schuller, Plaintiffs' exhibit "TTT"]. No exhibit "C" was attached to Defendants Motion for Summary Judgment.

6. Regarding *Defendants' paragraph 7*, no mention is made of Robin Schuller's phone call on page 9 of her testimony. When Plaintiff Brenda Lawvere spoke to Defendant Schuller on October 4, 1994, she requested copies of school policies and regulations regarding teaching children at home. Defendant Schuller did say she would file criminal charges against Plaintiffs if they failed to file an enrollment affidavit.

7. Plaintiffs object to *Defendants' paragraph 8*. Plaintiffs were not required to enroll their children in public school, nor were they required to file a home schooling certificate for a "home schooling program" which is also a "public school". [See Plaintiffs' aforementioned paragraph 3].

On October 6, 1994, Defendant Robin Schuller, directed by Superintendent Harrington, the East Lycoming School Board, and Attorney J. Howard Langdon, filed a private

criminal complaint against the Plaintiffs for alleged violations of 24 P.S. §13-1327.

As required by law, neither Defendant Schuller nor the East Lycoming School District and its representatives submitted their complaint and evidence to the District Attorney for Lycoming County. It is prima facie that the private criminal complaint lacks the approval and signature of the District Attorney. [See Plaintiffs exhibit "CC"].

8. Plaintiffs object to *Defendants' paragraph 9 and 10.* Plaintiffs original pleading was "non assumpsit" since Plaintiffs were under threat of arrest and were never duly served and did not know or understand the nature of the charges brought against them. The District Justice's Clerk, Lori Lynn refused to accept Plaintiffs non assumpsit plea and threatened to have them arrested. Under threat, duress, and coercion Plaintiffs submitted a "not guilty" plea to Clerk Lori Lynn. [See Plaintiffs attached exhibit "AV"].

Plaintiffs were prosecuted by Attorney J. Howard Langdon who represented the State in this criminal action. At the December 5, 1994, hearing Attorney Langdon used the court to conduct what amounted to a discovery hearing. Plaintiffs Motion for Extension of Time to find competent counsel and Motion to Dismiss were dismissed. Over and above Plaintiffs' objections, without subject matter or personal jurisdiction. Plaintiffs were found "guilty" by District Justice McRae.

9. Plaintiffs agree with *Defendants' paragraph 11.* They instituted this Title 42, sec. 1983 action for violations of their civil rights.

10. Plaintiffs agree with *Defendants' paragraph 12.* Defendant East Lycoming School District and Principal

Robin Schuller did violate Federal law and Plaintiffs' rights secured by the First Amendment to protect their freedom of religion and their rights to direct and control the education and upbringing of their children. Plaintiffs have shown and will show that Defendants have a custom and policy of unconstitutional conduct, even though they have sworn to uphold the Constitution of the United States and of the Commonwealth.

11. In response to *Defendants' paragraph 13,* Plaintiffs not only allege but they also will prove herein that they were not duly served with process in cases NT-0000619-94 and NT-0000620-94 pursuant to the Pennsylvania Rules of Court - Criminal.

Plaintiffs noticed the Defendants that as a result of the damages suffered, any other acts performed by the Defendants would be willful and intentional act of maliciousness [see Plaintiffs attached exhibit "KKK"]. Since the Defendants failed to respond or rebut the Notice and continued to cause Plaintiffs further damage, the presumption is therefore established fact that the Defendants maliciously damaged the Plaintiffs. (Title 28, Rule 301, Federal Rules of Evidence).

12. In response to *Defendants' paragraph 14,* Defendants' East Lycoming School District and Robin Schuller refused to answer and respond to Plaintiffs requests for public records and information under Pennsylvania's Right To Know law. Defendant Schuller, Mr. Harrington, or Defendant District, by their silence, agreed with presumptions set forth in Plaintiffs' correspondence. [see Plaintiffs' exhibits marked "MMM" and "TTT" - Letters to Mr. Harrington and Robin Schuller].

13. In response to *Defendants' paragraph 15,* Plaintiffs are unsure if Defendant School District has an obli-

gation to enforce compliance with compulsory school attendance. Plaintiffs cannot find in Act 1988-169 or 24 P.S. §13-1327 any mention of an obligation on behalf of Defendant School District.

14. Plaintiffs object to *Defendants' paragraph 16,* the compulsory attendance regulations do not "comport" or "behave in a manner comformable to what is right" with the First Amendment of the United States. There are no regulations pertaining to teaching children at home, and therefore Plaintiffs were prosecuted on non-existent regulations, a fact Plaintiffs continually made known to the Defendants.

15. Plaintiffs object to *Defendants' paragraph 17;* Defendants did not follow the Pennsylvania Rules of Court - Criminal for service of process. In fact, Plaintiffs never received duly served process as outlined by the State rules, as shown by the Court docket [see Plaintiffs' previous exhibit "YY"].

16. Plaintiffs object to *Defendants' paragraph 18;* it is not the violation of State law that Plaintiffs are arguing, but the violation and deprivation of Plaintiffs civil rights which was done *under color of State law.* "Any person that causes the deprivation of rights is liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." *David v. Johnson.* (1955 DC Ill) 138 F.Supp. 572.

17. Plaintiffs object to *Defendants' paragraph 19.* Defendants are NOT precluded from liability. The criminal action brought against Plaintiffs was never approved by the State Attorney, the magisterial district never had personal or subject matter jurisdiction, Plaintiffs were never duly served, never given the opportunity to interview witnesses, never given the opportunity to examine

the court docket, never given access to public information and the courts, never given equal protection under the law. The complaint filed by Principal Schuller and the ongoing proceedings were a sham. Since the magisterial district did not have jurisdiction, any and all subsequent decisions made by District Justice McRae are null and void.

18. Plaintiffs object to *Defendants' paragraph 20.* Defendants East Lycoming School District and Principal Robin Schuller refused to comply with Plaintiffs discovery requests for public information with which to prepare a defense in the State action. To date, the Defendants have also not complied with Plaintiffs discovery requests in this instant action.

Principal Robin Schuller filed a private criminal complaint against the Plaintiffs without an investigation, information, evidence, or probable cause. Plaintiffs had a Fifth amendment right to be informed of the nature and cause of the alleged violation; the right to face their accuser; to enjoy the right to a speedy and public trial by an impartial jury; and to have compulsory process for obtaining witnesses in their favor.

In turn Plaintiffs received silence to their requests of the nature and cause of the accusation and the name of their accuser. Plaintiffs were denied access to the court and a speedy and public trial of their peers. Defendant School District by and through its attorney denied Plaintiffs the right to discovery, including but not limited to the right to obtain witnesses in their defense. The acts which the Defendants committed in violations of Plaintiffs rights are numerous and shock the conscience. As a result of damages suffered at the hands of Principal Schuller and the East Lycoming School District, Plaintiffs suffered further damage and humiliation at the

hands of the District Justice and the Pennsylvania State Constables.

19. Plaintiffs object to *Defendants' paragraph 21.* There are numerous disputes regarding material facts. A jury needs to determine to what extent Defendant East Lycoming School District and Robin Schuller overstepped their bounds granted by legislative authority, and to grant Plaintiffs reasonable redress of damages as referenced in their complaint.

20. Plaintiffs object to *Defendants' paragraph 22.* Defendants are NOT entitled to judgment as a matter of law. Defendants have not submitted sufficient proof, affidavits, or any evidence to show that they have not violated Plaintiffs rights and that they are without liability for their actions. Therefore, Defendants are not even entitled to judgment based upon evidence, since they have not submitted preponderance of evidence.

WHEREFORE, Defendants East Lycoming School District and Robin Schuller should be denied summary judgement in their favor. This case has numerous material disputes and should be allowed to move forward to trial.

Respectfully submitted,

/s/ Scott & Brenda Lawvere
/s/ Ambassadors for Christ

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Ambassadors for Christ
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[Certificate Of Service Omitted In Printing]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Case Number 4:CV-95-1515

Complaint Filed 9/8/95

(Judge Muir)

Mr. & Mrs. Scott Lawvere

Plaintiffs

vs.

The East Lycoming School District
and The Pennsylvania State Constables
Robin Schuller, Principal
J. Howard Langdon, Attorney
and C. Roger McRae, District Magistrate
in their official and individual capacities

Defendants

PLAINTIFFS' BRIEF IN SUPPORT OF THEIR OBJECTION IN OPPOSITION TO DEFENDANTS EAST LYCOMING SCHOOL DISTRICT AND ROBIN SCHULLER'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiffs Scott and Brenda Lawvere, to submit their Brief in Support of their Objection in Opposition to Defendants' East Lycoming School District and Robin Schuller's Motion for Summary Judgment pursuant to the Federal Rules of Civil Procedure and Local Rule 7.4. Plaintiffs hereby incorporate their Objection in Opposition and Statement of Facts; Plaintiffs' memorandum of law is incorporated herein.

I. PROCEDURAL HISTORY

1. Plaintiffs filed this Title 42, sec., 1983 action on September 8, 1995, for violations of their civil rights by the named Defendants including but not limited to the East Lycoming School District (hereinafter called Defendant District) and Principal Robin Schuller (hereinafter called Defendant Schuller).

II. STATEMENT OF FACTS

2. On September 17, 1994, Plaintiffs received a letter from Defendant Schuller stating that it had "come to the East Lycoming School District's attention" that Plaintiffs allegedly had school-aged children. She further alleged that Plaintiffs were in "violation" of the Public School Code and demanded that Plaintiffs enroll their children in the Defendant District under threat of prosecution.

Defendants *misquote* Plaintiffs' complaint para. 6 in that Plaintiffs never stated they received a letter alleging violations nor did they ever receive a Notice of Violation.

On September 23, 1994, Plaintiff Scott Lawvere met with Defendant Schuler to discuss Plaintiffs' alleged non-compliance with the compulsory attendance provisions of the Public School Code. At this meeting, Plaintiff testified regarding his deeply held spiritual convictions and asked who had filed a complaint with the School District about alleged non-compliance. Plaintiffs' attempted to resolve any misunderstandings, but Defendant Schuller did not have the authority to resolve any conflicts. [see Plaintiffs previous exhibit "TTT" - Letter to Robin Schuller]

4. On October 5, 1994, Plaintiffs sent letters to Superintendent Harrington and Defendant Schuller as evidence

of Plaintiff's meeting and demanded a copy of the original complaint made against them to Defendant District as well as copies of the statutes, rules, and regulations pertaining to education in the home that Defendants believed the Lawveres had violated. Plaintiffs correspondence was never rebutted. By their silence, Mr. Harrington ard Defendant Schuller agreed that these rules and regulations do not exist and that they erred in their allegations against Plaintiffs.

In addition, Defendant Schuller was told not to answer Plaintiffs' correspondence by Superintendent Harrington. **[Plaintiffs exhibit "AP" - Robin Schuller, N.T. 15].**

5. Unaware to Plaintiffs, Defendant Robin Schuller, filed private criminal complaints against the Plaintiffs upon the recommendation of Defendant District on October 6, 1994 **[see Plaintiffs exhibit "AW" - Jane Dewire, N.T. 15]**; said complaints were filed with Magisterial District 29-3-03 before District Justice McRae for alleged violations of the Pennsylvania School Code, compulsory attendance provisions.

6. Before filing private criminal complaints against Plaintiffs for alleged misdemeanors, neither Defendant District, Attorney Howard Langdon, nor Principal Robin Schuller received approval from the Lycoming County State Attorney's office as is required by law. This is evidenced by Plaintiffs previously filed exhibits and the Pennsylvania Rules of Court - Criminal, Rules 51, 100-134.

Pa. R. Cr. P. Rule 133. "APPROVAL OF PRIVATE COMPLAINTS', specifically states: "(a) When the affiant is not a law enforcement officer and the offense(s) charged include(s) a misdemeanor or felony which does not involve a clear and present danger to any person or

to the community, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove without unreasonable delay."

7. On October 14, 1994, Plaintiffs received a letter from the Pennsylvania State Constables stating that a warrant had been issued for their arrest due to "illegal school absences". **[see Plaintiffs exhibit "U" - Letter from Constables]**. This is the first time that Plaintiffs were aware that some action had been taken against them. They were informed that failure to appear on October 19, 1994, would result in their "arrest anywhere within the Commonwealth."

On October 19, 1994, Plaintiffs went to District Justice McRae's office to enter a plea of "non assumpsit" since they did not know the nature of the action. Plaintiffs had never received service of process. Clerk Lori Lynn refused to accept Plaintiffs' plea and informed them that without entering the plea demanded they would be arrested. Plaintiffs entered a plea of "not guilty" under threat, duress and coercion as evidenced by their attached **exhibit "AV"**.

8. On December 5, 1994, during a summary hearing, Plaintiffs were found "guilty" of violating the compulsory school attendance provisions of the Public School Code of Pennsylvania. Plaintiffs were denied an extension of time to prepare a defense and seek competent counsel.

As evidenced by the previously filed court docket, Plaintiffs were never duly served a complaint or summons as provided by the Pennsylvania Rules of Court - Rules of Criminal Procedure. Further, Attorney for the Defendant District, J. Howard Langdon, refused to answer Plaintiffs' discovery requests and told Plaintiffs that criminal proceedings have no provision for discovery. As a result

of J. Howard Langdon and his client's refusal to answer discovery requests, Plaintiffs were denied the right to prepare a defense, and have a fair trial. *Coppolino v. Helpern,* (1967, SD NY) 266 F.Supp 930. *Johnston v. National Broadcasting Co.,* (1973, ED NY) 356 F.Supp, 904.

9. No final order was ever issued in NT-0000619-94 and NT-0000620-94 even after numerous requests by the Plaintiffs, therefore the Prothonotary's office would not allow Plaintiffs to proceed with an appeal pursuant to the Pennsylvania Rules of Court - Appellate Procedure. Plaintiffs were prejudiced and damaged from the outset of the aforementioned cases.

Plaintiffs were continually harassed and threatened that they would be prosecuted and have their children ripped from their home by the Defendants through Children and Youth Services.

10. Plaintiffs filed their caveat in cases NT-0000619-94 and NT-0000620-94 putting all interested parties on notice that Plaintiffs numerous rights had been violated including but not limited to due process of law. Plaintiffs repeatedly noticed District Justice McRae and the parties, therefore it must be presumed that they acted with malice and willful disregard of Plaintiffs' rights and property. District Justice McRae, Attorney Langdon and his client not only violated their Oaths of Office, but also the bounds of authority granted to them by government. *Fed. Crop Ins. Corp. v. Merrill,* 332 U.S. 380 at 384, (1947).

11. Plaintiffs' submitted their Unsworn Declaration Under Penalty of Perjury that they could not afford to pay any fines, fees, or costs. As a result, Plaintiff Scott Lawvere received a letter from the Pennsylvania State

Constables dated May 3, 1995, that a warrant had been issued for his arrest.

12. No warrant or notice was ever sent to Plaintiff Brenda Lawvere even though she was a named defendant in the State action and allegedly found "guilty" of Compulsory School Attendance statutes. Therefore, Plaintiff Scott Lawvere's rights to equal protection under the law secured by the Fourteenth Amendment were also violated.

13. On May 13, 1995, Plaintiffs received another letter regular mail from the Pennsylvania State Constables' office stating that Plaintiff Scott Lawvere was to report to District Justice McRae's office. Plaintiffs repeatedly called the District Justics's office to resolve any issues or problems but were denied access to the District Justice.

14. On May 19, 1995, as a result of the illegal and unlawful actions of Defendants District and Defendant Robin Schuller, Plaintiff Brenda Lawvere and her children were assaulted by Pennsylvania State Constables and suffered many violations of their civil rights. Their mental anguish continues to cause them mental grief and physical anguish to this day.

As a result of the unlawful actions of Defendants District and Schuller, Plaintiff Scott Lawvere suffered many civil rights violations including but not limited to equal protection, informed of reason of his arrest, and Miranda rights. To this day, Plaintiff and his family continue to suffer mental and physical anguish.

III. QUESTIONS

1. Have Defendant East Lycoming School District and Robin Schuller violated Plaintiffs' First Amendment Rights?

2. Have Defendant Schuller and East Lycoming School District violated Plaintiffs' rights to due process?

3. Are there undisputable material facts, and do they establish that Defendant Schuller has qualified immunity?

IV. ARGUMENT

15. Plaintiffs concur with Defendants District and Schuller regarding *F.R.C.P. Rule 56(c)* in that: "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Defendants District and Schuller bear the burden of showing the court, by reference to materials on file that there are no genuine issues of material facts that should be decided at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Clark v. Coats & Clark, Inc.*, 929 F.2d 604 (11th Cir. 1991).

When determining if issues of material fact exist, and if the moving party is entitled to judgment as a matter of law, the court must draw inferences from the evidence presented (i.e., pleadings, depositions, interrogatories, admissions, and affidavits) in the light most favorable to the nonmovant and resolve all reasonable doubts in that party's favor. *Spenc v. Zimmerman*, 873 F.2d 256 (11th Cir 1989).

To date, Defendants East Lycoming School District and Robin Schuller have *NOT* presented any affidavits in their defense. Defendants have *NOT* presented any affidavits showing that they did not in fact, commit the acts alleged in Plaintiffs complaint. Further, discovery has

shown that Defendants have a policy and custom of violating one's civil rights. *Kraus v. County of Pierce,* (1986, CA9 Wash), 793 F2d 1105, cert den 480 US 932, 94 L Ed 2d 763, 107 S Ct 1571.

To date Defendants District and Schuller have not provided Plaintiffs their interrogatories *UNDER OATH* as required by the Federal Rules of Civil Procedure, nor have they complied with discovery requests. Plaintiffs wonder what the Defendants have to hide in that they have continued in their custom of non-compliance with discovery requests.

1. Have Defendants East Lycoming School District and Robin Schuller violated Plaintiffs First Amendment Rights?

16. In *Jeffery v. O'Donnell,* the Middle District stated "parents have a constitutional right to direct and control the upbringing and development of their minor children," *Jeffery v. O'Donnell,* 702 F.Supp 513, 515 (1988). Plaintiff have not now nor ever waived their parental rights.

The Middle District further stated that ". . . when First Amendment rights are effected by the enforcement of a statute, a state law will be held to a higher standard of specificity than might be the case if purely economic regulation was at issue." *Jeffrey v. O'Donnell,* 702 F. Supp 519.

17. Plaintiff were charged with alleged violations of 24 P.S. 1327, specifically Compulsory School Attendance. Section 1327 states that ". . . every child of compulsory school age having a *legal residence* in this Commonwealth, as provided in this article, . . is required to attend a day school in which subjects and activities prescribed by the State Board of Education are taught in the

English Language . ." **[see Plaintiffs attached exhibit "A"]** (A) Plaintiffs children are not now nor have they ever been "legal residents" of the body politic known as the "Commonwealth". Therefore, this section of the Act does not apply to Plaintiffs or their children.

(B) Even if Plaintiffs and their children were residents of the Commonwealth, they cannot be held liable for violations of the Pennsylvania School Code, including but not limited to Section 1327. **[see Plaintiffs attached Declaration Under Penalty of Perjury, exhibit "AZ"]**

45 P.S. §1102, provides for the Promulgation of Regulations and Format of Documents. State agencies have an obligation to promulgate, amend or repeal any administrative regulation, as well as stating the authority under which the regulation is to be promulgated. 45 P.S. §1206, specifies that All regulations expressly indicate its statutory authority. 45 P.S. §1208, specifies that all unfiled regulations are invalid. **[see Plaintiffs' attached exhibit "AY"]**

The statutory authorities listed in Purdon's Statutory References for 24 P.S. 1327 are: Title 22, Chapters 7, 11, 14, and 51. Chapter 7 deals with Home School Visitors; Chapter 11 contains General Provisions regarding enrollment in Public Schools; Chapter 14 deals with Parental Placement in Private Schools, and Chapter 51 deals with regulated public schools following statutory guidelines.

Nowhere in any of the aforementioned regulations is there any statement or provision for children taught in the home by their parents.

(C) Plaintiffs cannot be held liable for 24 P.S. §1327 or its implemented regulations.

"An individual cannot be prosecuted for violating the Act unless he violates an implementing regulation." *United States v. Reinis,* 794 F2d 506, 508 (9th Cir 1986).

18. Since a State law and its regulations are "held to a higher standard of specificity", Plaintiffs have shown that the aforementioned statute and regulations do not apply to them, and that they have not violated any State law or regulations. Defendants Robin Schuller and East Lycoming School District interfered with and violated their deeply held spiritual convictions as well as their Parental Rights and Obligations secured by the First Amendment and as outlined in the Hold Scriptures which is confirmed and secured by Public Law 97-280, Year of the Bible and Public Law 101-209, wherein the President and Congress of the United States declared that we have an obligation to read and apply the teachings of the Holy Scriptures.

19. 24 P.S. §1354 makes no provisions for criminal complaints against children, parents, or guardians. 24 P.S. §1354 has to date never been filed or promulgated with the Legislative Reference Bureau. There are no promulgated and implemented regulations for 24 P.S. §1354 and therefore it is invalid pursuant to Pennsylvania law. There are no provisions for penalties against school district employees as Defendants allege.

Plaintiffs have shown that the compulsory attendance provisions have interfered with their constitutional guarantees and the enforcement actions of the Defendants have violated their First Amendment rights as outlined herein.

Defendants are *NOT* entitled to Summary Judgment.

2. Have Defendants Schuller and East Lycoming School District violated Plaintiffs' rights to due process?

Plaintiffs have and will demonstrate that the Defendants have deprived them of rights and privileges secured by the Constitution of the United States.

20. Defendants violated Plaintiffs rights to have access to information which is protected by the First Amendment. *Virginia State Board of Pharmacy v. Virginia Citizens Consumers Council, Inc.*, (1976) 425 US 748, 48 L.Ed 2d 346, 96 S Ct 1817.

During the September 23 and 26, 1994 meetings, and upon written requests under the Pennsylvania "Right to Know Laws", Plaintiffs were denied access to public information such as the administrative complaint filed against them with the School district, as well as copies of all statutes, rules, and regulations the Defendants believed Plaintiffs had violated. The Defendants failed to rebut any and all presumptions as well.

Plaintiffs have a First Amendment right to access of information and this right is protectable under Title 42, §1983 against those acting under color of law. *Goodwin v. Cross County School District*, (1973, ED Ar,) 349 F Supp 417.

21. Defendants, *under color of State law*, violated Plaintiffs right to due process.

(A) Without probable cause, Defendant Schuller, upon the recommendation of the Defendant District, filed a private criminal complaint against Plaintiffs. Defendants did not know whether or not Plaintiffs had children or even if they had violated compulsory attendance laws. [see attached exhibit "AW" - Jane Dewire, N.T. p. 7]. Plaintiffs never received a "Notice of Violation" as prescribed by the Pennsylvania School Code, nor were they

afforded an administrative hearing. (B) Defendants violated State Law and Pennsylvania Rules of Court - Criminal, Rule 133, by not submitting the private criminal complaint to the District Attorney's office and thereby violating Plaintiffs procedural due process rights. (C) On the face of the complaint filed by Defendant Schuller, she asked that a warrant be issued for the Plaintiffs and that they be brought in to answer for same. As already admitted by Jane Dewire, Defendants were *without probable cause* and did cause arrest warrants to be issued for Plaintiffs resulting in duress, coercion, and mental anguish. (D) Plaintiffs were never served a summons or complaint as outlined in the Pennsylvania Rules of Court - Criminal Procedure, and were never given the opportunity to answer such summons/complaint. (E) Plaintiffs were never given the opportunity to face their accuser. (F) In violation of Pennsylvania's Sunshine Law, Plaintiffs were never given notice that they were discussed in executive session and given the opportunity to rebut any allegations. [see Plaintiffs attached exhibit "AW" - Jane Dewire, N.T. p. 12, 14, and 15] (G) Defendants refused to comply with discovery requests in cases NT-0000619-94 and NT-0000620-94 (see attached interrogatories marked Plaintiffs exhibit "BA"; Plaintiffs were told there was no provision for discovery in criminal cases. (see Plaintiffs previously attached exhibit "AG". To date, Defendants continue to refuse to comply with Plaintiffs discovery requests IN THIS INSTANT ACTION.

22. Defendants argue *Monell v. New York City, Dept. of Social Services,* that "a local government may not be sued under §1983 for an injury solely by its employees". *Monell,* Id 436 US 658, 691-695, 98 S.Ct. 2018 (1978).

Plaintiffs are suing both Defendant Schuller AND the East Lycoming School District for their actions under

color of law that resulted in Plaintiffs damages. It was Defendant District that discussed Plaintiffs in executive session in violation of the Sunshine Law. It was Defendant District that conducted a vote/consensus to prosecute Plaintiffs as has been shown herein. It was Defendant District that Directed Principal Robin Schuller to meet with Plaintiffs to discuss "compliance", but Robin Schuller admittedly stated she did not have the "authority" to settle issues surrounding school attendance. It was Defendant District that directed Defendant Schuller to file a private criminal complaint against Plaintiffs, without probable cause and violating Plaintiffs rights to due process. It was Superintendent Harrington who told Defendant Schuller not to answer Plaintiffs' questions or correspondence.

By the Language of Defendants' brief, the East Lycoming School District would have the Plaintiffs and this Court believe that Defendant Schuller acted alone; it is apparent that Defendant District would have Schuller the proverbial "sacrificial scapegoat". The actions of both Defendants are so intertwined that it is impossible to separate them.

"Municipalities are persons to whom (Title 42) §1983 applies." *Monell v. Department of Social Services,* (1978) 436 US 658, 56 L.Ed. 2d 611, 98 S.Ct. 2018. The conduct of the East Lycoming School District has caused and subjected Plaintiffs to denials of constitutionally secured rights. Said causation is a "natural consequence" of the municipality's policy. *Smith v. Ambrogio,* (1978, DC Conn) 456 F.Supp 1130, 1135. This policy need not be written, but has been shown to be a pattern of persistent practices sufficiently known to and approved by the East Lycoming School District, its officers and members which constitutes a "custom" of authoritativeness. *Muz-*

quiz v. San Antonio, (1978, CA5 Tex) F2d 529; *Smith v. Ambrigio,* Id.

3. Are there undisputable facts, and do they establish that Defendants Schuller has qualified immunity"?

The conduct of Defendant Schuller violated "clearly established constitutional rights of which a reasonable person would have known" and therefore she is without any qualified immunity. *Harlow v. Fitzgerald,* 457 U.S. 800, 818, 102 S Ct 2727, 2738 (1982)

Defendant Schuller stated in her testimony that she would "need all of the laws of the State" in order to determine whether enrollment is necessary for attendance to be required. **[see attached exhibit "AP", Robin Schuller, N.T. p. 11]** She also admitted that she never received any written documentation of any violations. **[see attached exhibit "AP" Robin Schuller, N.T. p. 14].** Defendant Schuller relied upon her own personal knowledge of school attendance, policy, the School Code, and conversations with Superintendent Harrington. **[attached exhibit "AP", Robin Schuller, N.T. 17]** Defendant Schuller could and should have known that without personal knowledge or written documentation of violations, it is NOT reasonable to file criminal complaints against a child, parent, or guardian. Based upon her own lack of knowledge, she should and could have known that any issues concerning violations should have been handled by the School Districts' attorney.

24. Public officials do not have immunity simply because she operates in a discretionary situation. It is indicated that public servants are to be held liable when they abuse their discretion or acted in a way that is arbitrary, fanciful, or clearly unreasonable. *Littleton v. Berbling,* (1972, CA 7 Ill) 468 F.2d 389. Employees of municipalities are not immune from suit under statutes relat-

ing civil rights for deprivations of rights on the ground that they were acting within the scope of their responsibilities of performing a discretionary act. *Bunch v. Barnett,* 376 F.Supp 23. "Public officials are not immune from suit when they allegedly violate the civil rights of citizens . . the defense of immunity is to be sparingly applied in these kinds of cases." *James v. Ogilvie,* (1970 ND Ill) 310 F.Supp 661, 663.

Therefore, Defendant Schuller does *NOT* have qualified immunity.

Respectfully submitted,

/s/ Scott & Brenda Lawvere
/s/ Ambassadors for Christ

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APPENDIX F

[Filed Mar 19 1997]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 4:CV-95-1515
Complaint Filed 9/8/95
(Judge Muir)

MR. AND MRS. SCOTT LAWVERE,
Plaintiffs

v.

THE EAST LYCOMING SCHOOL DISTRICT, et al.,
Defendants

ORDER
March 19, 1997

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On January 29, 1997, we issued an order in which we granted the remaining Defendants' motion for summary judgment and directed that the file in this case be closed. On February 13, 1997, Plaintiffs Scott and Brenda Lawvere filed a "motion for rehearing" of our order of January 29, 1997, and a brief in support thereof. We will construe the Lawveres' motion as a motion for reconsideration under Fed.R.Civ.P. 60(b). On February 24, 1997, Defendants East Lycoming School District and Robin

Schuller filed a brief in opposition to the Lawveres' motion. On March 3, 1997, the Defendant referred to in the Lawveres' complaint as the "Pennsylvania State Constables" filed a separate brief in opposition. On March 11, 1997, The Lawveres filed a motion to strike the opposing brief of Schuller and the East Lycoming School District. The Lawveres filed a brief in support of their motion to strike on the same date. On March 18, 1997, the Lawveres filed a reply brief with respect to their motion for reconsideration. The motion for reconsideration is ripe for disposition.

A motion for reconsideration is a device of limited utility. It may be used only to seek remediation of manifest errors of law or fact or to present newly discovered evidence which, if discovered previously, might have affected the Court's decision. Harasco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). A motion for reconsideration must rely on at least one of three grounds: (1) an intervening change in controlling law; (2) the availability of evidence not previously available; or (3) the need to correct a clear error of law or prevent manifest injustice. McDowell Oil Service v. Interstate Fire & Casualty, 817 F. Supp. 538, 541 (M.D. Pa. 1993) (McClure, J.). In *McDowell,* the Court stated that a motion for reconsideration ". . . is not to be used as a means 'to reargue matters already argued and disposed of' by prior rulings 'or to put forward additional arguments which it could have made but neglected to make before judgment.' " *McDowell,* 817 F. Supp. at 541 (citations omitted).

In their motion for reconsideration, the Lawveres merely restate arguments which they set forth in their brief in opposition to the Defendants' motion for summary judgment and which we rejected in our order of

January 29, 1997. This restatement of arguments already considered by the Court is improper. *McDowell*, 817 F. Supp. at 541.

The Lawveres do not present either an intervening change in the controlling law or new evidence not previously available as grounds for their motion for reconsideration. We have thoroughly reviewed our order of January 29, 1997, and we are convinced that we did not make an error of law. Consequently, we will deny the Lawveres' motion for reconsideration.

We will now address the Lawveres' motion to strike the opposing brief of Schuller and the East Lycoming School District. In their motion, the Lawveres take issue with various factual assertions contained in the opposing brief and again attempt to reargue the propriety of our grant of summary judgment. Construed in the light most favorable to the Lawveres, the assertions in the motion to strike have no bearing on the merits of their motion for reconsideration. We will deny the motion to strike.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The Lawveres' motion for reconsideration filed February 13, 1997, is denied.

2. The Lawveres' motion, filed March 11, 1997, to strike the opposing brief of Schuller and the East Lycoming School District is denied.

/s/ Malcolm Muir, Sr.
MUIR, U.S. District Judge

MM:jt

No. 97-1343

(3)

Supreme Court, U.S.
FILED
MAR 20 1998
CLERK

In The

Supreme Court of the United States

October Term, 1997

SCOTT and BRENDA LAWVERE, AMBASSADORS FOR CHRIST,

Petitioners,

vs.

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS PENNSYLVANIA STATE CONSTABLES, GURN WEBER, STEVEN LITZELMAN AND LARRY PETERMAN

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STATEMENT OF THE CASE

This petition is presented by Scott and Brenda Lawvere, self-styled Ambassadors for Christ (the "Lawveres"). The Lawveres' difficulties were triggered by their failure to comply with Pennsylvania statutory requirements regarding the compulsory education of their children. The Lawveres' particular claims as against respondents Pennsylvania State Constables and Constables Gurn Weber, Steven Litzelman, and Larry Peterman (collectively, the "Constables") arose out of the Constables' attempt to enforce orders issued by District Justice McRae against Scott Lawvere because of his statutory violations.

The Lawveres' petition and its focus on perceived procedural slights — including the Court of Appeals' supposed denial of the Lawveres' right to "equal access to the courts," Petition for Certiorari at 5 — is illustrative of the Lawveres' litigation pattern. Whether through design or inadvertence, the Lawveres have complicated the proceedings from the outset, with multiple filings and creatively-named documents unrecognized by the rules. Having themselves generated undue procedural complexity, the Lawveres have then complained throughout about purported technical violations that have no impact on the substantive outcome.

When the substance of the Lawveres' contentions is examined, it is evident that they contain nothing warranting this Court's review. As to the Constables, the District Court granted their summary judgment motion and its order was affirmed by the Court of Appeals. In requesting this Court's review of that ruling, the Lawveres present the garden-variety argument that there were triable issues of material fact that were somehow missed below. The Lawveres do not contend that the District Court, in ruling on the Constables' motion for summary judgment, articulated the wrong standard or cited the wrong

legal precedent; they only contend in conclusory fashion that the District Court "attempted to resolve issues of material fact in dispute. . . . " Petition for Certiorari at 8. The Lawveres fail, as they failed below, to point to the record with particularity and show any material fact that is in genuine dispute.

A. The petition misrepresents the procedural posture before the District Court.

In keeping with their proclivity to address procedure over substance, the Lawveres misrepresent the state of the record. Although the Lawveres contend that they were "hampered during discovery," Petition for Certiorari at 4, this assertion stands in stark contrast to the actual record of extensive documents, interrogatory answers, and depositions that were provided to the Lawveres in the course of the proceedings below. Despite this voluminous discovery, the Lawveres were unable to find any material portions that stood in opposition to the Constables' motion for summary judgment. Although they now claim incomplete discovery, the Lawveres did not raise that argument to the District Court in their opposition to the Constables' motion, and they filed no affidavit under Rule 56(f) of the Federal Rules of Civil Procedure.

B. The petition misrepresents the basis of the District Court's ruling with respect to the Constables' Motion.

The Lawveres further misperceive the basis for the ruling by the District Court with respect to the Constables' motion. That ruling can be stated in two paragraphs quoted from the District Court's order of January 29, 1997:

> The Lawveres make no assertion that the actions of the Constables were carried out pursuant to an unconstitutional policy or custom and we are aware

of none. Consequently, we will grant the Constables' motion for summary judgment.

* * *

Moreover, the Lawveres' amended complaint merely restates the claims set forth in their original complaint as to the East Lycoming School District and Robin Schuller. The Lawveres' amended complaint sets forth claims against the Constables which do not differ in substance from the claims set forth in the original complaint but which allege misconduct by individual Constables. The Lawveres, however, point to no evidence on the record that the Constables used force against Brenda Lawvere and we are aware of none. Furthermore, failure by police to issue Miranda warnings is not actionable under 42 U.S.C. § 1983. Warner vs. City of Lincoln, 864 F.2d 1436, 1442 (8th Cir. 1989); Cooper vs. Dupnik, 924 F.2d 1520, 1529 (9th Cir. 1991); Bennett vs. Passaic, 554 F.2d 1260, 1263 (10th Cir. 1976).

A. 7-8.

The District Court thus ruled that the Lawveres' claim failed as a matter of substantive law, without regard to whether the "plaintiffs suffer[ed] damage." Petition for Certiorari at 5.

REASONS FOR DENYING THE WRIT

It is plain from their formulation of the questions presented for review that the Lawveres' claim is ultimately fact-driven, case specific, and non-precedential. Three of the four questions they raise, Petition for Certiorari at i-ii, can be distilled into

one: whether the District Court overlooked material issues of fact existing in the record. As the District Court stated on this subject, the Lawveres fail to "point to [any] evidence in the record," A. 8, showing any such facts and there are none.

Contrary to the Lawveres' suggestion that there is some conflict between the law as applied by the District Court and the law applied in other circuits, the correct and only summary judgment standard was articulated and applied below. *See* A. 4-5. In applying that standard, the District Court correctly concluded that the Lawveres failed even to claim that the Constables' actions were carried out under an unconstitutional policy or custom, as required by this Court in *Monell v. New York City Department of Social Services*, 436 U.S. 658, 98 S. Ct. 2018 (1978). The District Court further noted the absence of any evidence of record to demonstrate the use of force against petitioner Brenda Lawvere. With respect to the contention that Scott Lawvere, when arrested, was not issued *Miranda* warnings, the District Court utilized established and uniform law from other circuits in determining that such a claim is not actionable under 42 U.S.C. § 1983, citing *Warner v. City of Lincoln*, 864 F.2d 1436, 1442 (8th Cir. 1989); *Cooper v. Dupnik*, 924 F.2d 1520, 2529 (9th Cir. 1991); and *Bennett v. Passaic*, 554 F.2d 1260, 1263 (10th Cir. 1976).

CONCLUSION

The Lawveres' petition presents nothing warranting this Court's review. Accordingly, that petition should be denied and this matter finally concluded.

Respectfully submitted,

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97-1343

Supreme Court, U.S.
FILED
APR 9 1998
CLERK

UNITED STATES SUPREME COURT
WASHINGTON, D. C.
October Term, 1997

In Re: Lawvere vs.
East Lycoming School District, et al.
Appellate Court Case No: 97-7215

Scott and Brenda Lawvere, Ambassadors for Christ
Petitioners

vs.

THE UNITED STATES COURT OF APPEALS,
THIRD CIRCUIT, PHILADELPHIA, PA
Respondent

On Petition for a Writ of Certiorari To the United States Court of Appeals, Third Circuit

PETITIONERS REPLY BRIEF TO DEFENDANTS EAST LYCOMING SCHOOL DISTRICT & ROBIN SCHULLER

Prepared By: Scott and Brenda Lawvere
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(9th Cir 1986) 2

INTRODUCTION

Plaintiffs bring to the Court's attention that the named Respondents on Defendants' (i.e., Schuller & East Lycoming School District) cover page are incorrect; Respondent "Third Circuit" should be listed. Plaintiffs also bring to the Court's attention that Defendants' counsel, Anthony R. Sherr, is not currently certified to practice before the Bar pursuant to Supreme Court Rules 5 and 9, and will not be licensed to practice until after this Court has heard the briefs in this action. The Clerk's office, in direct contradiction to the Rules and Admittance office, has returned Plaintiffs' Motion to Strike the aforementioned Brief, even though it complied with the Supreme Court Rules of Procedure.

In response to Defendants' statements that Plaintiffs have not complied with the rules **(brief p. 1)**, If Plaintiffs Petition was not filed in a timely fashion, the Clerk's office would have returned the Petition. Plaintiffs timely filed their Petition in keeping with the Rules.

PLAINTIFFS' COUNTERSTATEMENT

Plaintiffs agree they received said letter from Defendant Schuller. Yet the letter never stated **(brief p. 2)** that Plaintiffs were in violation of the Pennsylvania Compulsory School Attendance statute. Schuller specifically stated it had come to the District's attention that the Plaintiffs allegedly had

> "three school aged children . . subject to . . the Public School Code"

and that there was no record of the children being "registered". To further correct the Defendants' statements, Mr. Lawvere met with Robin Schuller who stated she did not have authority to make decisions and that Mr. Lawvere would have to meet with Superintendent Harrington.

Plaintiffs did not "fail" to comply with state statutes as alleged **(brief p. 2)**; Plaintiffs were not and are not residents of the District, nor were or are they subject to any compulsory attendance statute. Even if Plaintiffs were subject to said statute, they could not have violated the Pennsylvania School Code since they did not violate the implemented and promulgated rules and regulations since none exist pertaining to home schooling or for any alleged criminal fines and penalties. U.S. vs. Reinis, 794 F.2d 506, 508 (9th Cir 1986); 45 P.S. 1208; 1102, 1206, Laws of Pennsylvania.

On October 6, 1994, Schuller, with full support and approval of the District and Superintendent Harrington, filed a private criminal complaint with the District Magistrate in violation of state statute, rules, and procedures outside the scope of her office (Petition for Writ of Certiorari, p.7, {3}), without approval from the District Attorney's office. Monroe v. Pape, 365 U.S. 167 (1961), Pennsylvania Rules of Criminal Procedure, Rule 106. Schuller later stated under oath that the complaint was filed without any "personal knowledge" of violations by Plaintiffs of the Pennsylvania School Code **(brief p. 3).**

Plaintiffs pled "non assumpsit" upon receiving a letter from Pennsylvania State Constable Larry Peterman threatening their arrest. Magistrate McRae's clerk refused to accept this plea. As noted on the record, Plaintiffs were forced to plea "not guilty" under coercion, duress, and threat of incarceration. **(brief p. 3, {1}).** Plaintiffs were never duly served process.

Plaintiffs were also denied the right to conduct discovery by Magistrate McRae and Defendant's **acting public** attorney J. Howard Langdon refused to answer Plaintiffs discovery requests. McRae also denied Plaintiffs access to court files

and told them to "subpoena" them. Plaintiffs could not examine the files for more than one year.

In granting summary judgment to the Defendants, Judge Muir decided "issues of fact", an act he is not permitted to do. National Surety Co. v. First National Bank of Indiana, 106 F.Supp. 302. Judge Muir stated that the:

> "liability of a governmental agency . . may not be proven under the respondeat superior doctrine, but must be found upon evidence . . . that the unit itself supported a violation of constitutional rights."

Muir stated that Plaintiffs "cited no evidence" of unconstitutional policy, not as alleged . . "a complete lack of evidence." **(brief p. 4)**. Regarding Schuller the Court also never stated there was a "complete lack of evidence".

Plaintiffs remaining claims were not under state law as alleged **(brief p. 4)**, but secured under the 1st and 5th Articles of the Bill of Rights to have access to information and due process. Goodwin v. Cross Co. School District (1973 Ed Ark) 394 F. Supp 417.

Judge Muir in his order of March 19, 1997, failed to address any of the new evidence incorporated with and attached to Plaintiffs' Motion for Rehearing. Defendants are attempting to mislead the court. Said Motion contained, including but not limited to, an eyewitness account of the assault upon Brenda Lawvere and her children; evidence that the School District waived its right to file a complaint even if Plaintiffs were subject; and procedural deficiencies that violated Plaintiffs rights to due process **(brief p. 5)**. The evidence further supported Plaintiffs claims and proved genuine issues of fact existed.

Plaintiffs appealed the District Court's order to the Third Circuit. Upon filing their Brief, Plaintiffs became aware of irregularities in the Court docket. The clerk's office notably gave legal advice to the Defendants; excused late filings; corrected and bound some of the Defendants' briefs; failed to timely file Plaintiffs' Briefs and ignored Plaintiffs' motions and pleadings. Once again Plaintiffs were held to a higher unknown standard and denied due process. Even Plaintiffs' Petition for Rehearing was treated as one "en banc" even though not requested, over and above Plaintiffs objections. Plaintiffs then appealed.

ARGUMENT

In response to Defendants' argument, Plaintiffs not only contend but maintain that not only were their numerous rights violated by the Defendants under color of law, some of whom are policymakers, Plaintiffs were also denied due process and equal access to the courts **(brief p. 6 {2}).**

Plaintiffs object to Defendants' statements on **page 6** in the **brief.** The Court never stated there were "no genuine issues" of material fact in dispute. In fact, evidence on the record proved otherwise. Plaintiffs also object to counsel's statements that the Third Circuit's decision does not conflict with other decisions.

A. Plaintiffs agree with Defendants' legal argument **(brief p. 7).** Further, **F.R.C.P. Rule 56(c)** states that judgment should be rendered only if:

> "the pleadings, depositions, answers to interrogatories, and admissions on file together with affidavits if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."

Further in response, summary judgment should not have been granted, since Defendants failed to submit any affidavits in their defense; refused to timely answer interrogatories under oath; hindered the deposition of at least one witness; refused to produce documents; and submitted unsigned pleadings, all in violation of the Rules of Court and Plaintiffs' rights. Documentation on the record proved genuine issues of material fact did exist, which is why the case was set for trial.

B. In response to Defendant's Brief **(p. 8 {1})** it is axiomatic that a public school district is not a municipality within the meaning of the term, but is a quasi corporation acting as an agent of the state to manage the public school system. Therefore Monell does not apply. Monell v. New York City, Dept. of Social Services, 436 U.S. 658, 56 L.Ed.2d 611, 98 S.Ct. 2018.
In the event this Court finds Monell does apply, please take note that the unconstitutional actions by Defendant Schuller, under color of law, which violated Plaintiffs rights, were approved of and sanctioned by Superintendent Harrington and the School District. Schuller did not act alone.

The issue of unconstitutional custom and policy was raised for the first time by Defendant District in their Motion for Summary Judgment, which Plaintiffs' rebutted. The Court never took into account the sworn testimony of Defendant Schuller who stated she had no personal knowledge of any violations, or the testimony of School Board President DeWire who stated there was no home school policy, or Superintendent Harrington who testified that Schuller did not have authority to file a Criminal Complaint even though compelled to file by the District and Harrington.

In response to Defendants' **(brief, p. 9-10),** Plaintiffs are not lawyers and object to counsel's statements that their Petition

is "unclear", or that their hard work and legal research is "misplaced or inappropriate". Plaintiffs expected professionalism from counsel, not petty comments about quality of Plaintiffs" Petition. Plaintiffs also object to statements that they allegedly "failed" to "Identify" relevant evidence regarding unconstitutional custom and policy.

Plaintiffs object to counsel's statements about a scrivener's error on **Bowen v. Watkins**, 669 F.2d 979 (1982), **(brief p. 10)**. As this Court is well aware, this case deals with issues of civil rights and municipal liability and therefore is directly related to this action.

C. In response to Defendants' statements **(brief p. 13-14)**, Plaintiffs state that when Schuller violated their rights, she, with alleged approval of the School District, violated clearly established statutory and constitutional rights, including but not limited to Plaintiffs right to have due process and the right to have access to information to prepare a defense. Therefore, Schuller is without qualified immunity. James v. Ogilvie, (1970 ND Ill) 310 F.Supp 661, 663; Harlow v. Fitzgerald, 457 U.S. 800, 818 102 S.Ct. 2727, 2738 (1982).

Schuller admitted she had no authority; admitted she had no personal knowledge of a violation, and that she didn't even know if Plaintiffs even had children; also admitted she had insufficient knowledge to make a determination to file; and that she filed without approval of the District Attorney's office in violation of state law, rules, and procedures.

Plaintiffs agree that Judge Muir should have examined the conduct of each Defendant that claimed qualified immunity and failed to do so. Neither Judge Muir, nor the Third Circuit, examined "detailed factual descriptions" of each Defendants' actions thus prejudicing the Plaintiffs' case.

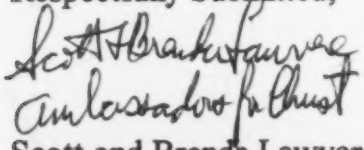
It was the Courts' duty to "be watchful" of Plaintiffs constitutional rights to prevent encroachment and they were not. Boyd v. U.S., 116 U.S. 635.

There is no doubt genuine issues of material fact were in dispute, that Judge Muir prejudiced Plaintiffs' case by failing to timely rule on Motions and failing to require Defendants to comply with the Rules of Court and answer Plaintiffs discovery requests. The Third Circuit also prejudiced Plaintiffs by holding them to a higher standard and not giving them equal access to the courts and due process of law.

CONCLUSION

WHEREFORE, based upon the foregoing, Plaintiffs renew their argument in support of their Petition for Writ of Certiorari to issue to the Third Circuit.

Respectfully Submitted,



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Supreme Court, U. S.
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No. 97-1343

UNITED STATES SUPREME COURT
WASHINGTON, D. C.
October Term, 1997

In Re: Lawvere vs.
East Lycoming School District, et al.
Appellate Court Case No: 97-7215

Scott and Brenda Lawvere, Ambassadors for Christ
Petitioners

vs.

THE UNITED STATES COURT OF APPEALS,
THIRD CIRCUIT, PHILADELPHIA, PA, et al.
Respondent

On Petition for a Writ of Certiorari To the United States Court of Appeals, Third Circuit

PETITIONERS' REPLY BRIEF TO DEFENDANT PENNSYLVANIA STATE CONSTABLES

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INTRODUCTION

Comes now Petitioners Scott and Brenda Lawvere, Ambassadors for Christ, to submit their Reply Brief to Pennsylvania State Constables' (Constables) Brief in Opposition, pursuant to Supreme Court Rules of Procedure, Rule 15.6. Plaintiffs object to Defendant's lack of a signed or notarized certificate of service in violation of Supreme Court Rule 29.

PETITIONERS COUNTERSTATEMENT

Petitioners object to Defendant's statement that they are "self styled Ambassadors for Christ" **-Brief p.1-** Petitioners are unsure of counsel's meaning, but clearly state for the record that they are Ambassadors for Christ pursuant to II Corinthians 5:20, since they are reconciled to the Creator, Yahweh:

"We are therefore Christ's ambassadors, as though God were making his appeal through us."

Plaintiffs' so-called "difficulties" **-Brief p.1-** were not "triggered" by any failure on the Plaintiffs' part to comply with statutory compulsory requirements. Such statutory requirements do not exist; there are no rules, regulations, statutes or law compelling non-resident families to enroll children in public schools of the District. Plaintiffs did not violate any alleged compulsory statute since they did not violate implemented and promulgated rules and regulations- such rules and regulations do not exist. United States v. Renis, 794 F.2d 506, 508 (9th Cir 1986).
Plaintiffs' *claims* arise out of damages suffered as a result of the unconscionable acts of the named Defendants under color of law, including but not limited to a Constables act in pointing a loaded 12 gauge shotgun in the faces of Brenda Lawvere and her minor children, and the failure to prevent

such assault by other Constables who stood nearby and watched, not because of some alleged statutory violation. Defendants continue to claim their acts were "justified."

Plaintiffs' object to Defendants' Brief which amounts to nothing more than gibes and a personal attack. Plaintiffs' petition does not focus on "procedural slights" **-Brief p.1-** but on violations of their inherent rights including but not limited to their right to due process.

Plaintiffs are not attorneys or learned in the law; they have attempted to read and study on how best to preserve their rights given to them by Yahweh. Those same rights as outlined by the Mosaic law covenant which this day can be seen on the wall of this Honorable Court, and which are secured by the Bill of Rights, "restrictions" upon the power of government.

> **"PREAMBLE . .** The conventions of a number of the States having at the time of their adopting the Constitution of the United States, expressed a desire, in order to prevent misconstruction or abuse of it's powers, that further declatory and restrictive clauses should be added....."

A. Plaintiffs do not "misrepresent the record".

Plaintiffs object to counsel's statement that Plaintiffs have "misrepresented" the record. Counsel fails to state the fact that Defendant Constables hindered discovery and finally supplemented their answers to Admissions and Interrogatories on August 27, 1996, almost seven (7) months after being duly served same. **(D.C. Docket #187)** Constables also finally served interrogatories under "penalty of perjury", not under oath as required by the Federal Rules of Civil Procedure, also on August 27, 1996, after the deadline for discovery, and after Plaintiffs' submitted their Motion to compel answers to

same under Oath **(Appendix sup. petition pp. 34-35)**. It is not the Plaintiffs who have misrepresented the record.

B. Plaintiffs do not "misrepresent" the facts.

Plaintiffs object to counsels' statements **-Brief p.2-**. The very creation of the quasi-political entity "Pennsylvania State Constables" is pursuant to an unconstitutional custom and policy whereby elected/appointed Constables, using their collective powers of office, created an artificial entity going so far as to rent commercial space and advertise in the white pages under said name. Under Act 147, 1990, 598 A2d 985 (PA 1991) said powers of office for Constables were repealed and never re-enacted. Constable Peterman and his fellow "officers" stated they were representing "Pennsylvania State Constables", when a loaded 12 gauge shotgun was pointed into the faces of Brenda Lawvere and her minor children. There can be no doubt they acted pursuant to an unconstitutional custom and policy since the very entity they created was unconstitutional, illegal and unlawful. Scott v. Vandiver, (1973 CA 4 SC) 476 F.2d 238.

Regarding Plaintiffs' amended complaint **-Brief p.3-**, Plaintiffs only altered the complaint to add the names of the individual Constables whose names were not previously known to them at the time the original complaint was filed.

Plaintiffs object to counsel's statements regarding lack of evidence and their alleged "failure" to submit an affidavit under F.R.C.P Rule 56(f) **-Brief p.2-**. Plaintiff Brenda Lawvere and her daughter Rachel Lawvere submitted notarized Declarations in the form of affidavits, pursuant to U.S.C. Title 28, § 1746 regarding their assault. Plaintiffs also submitted a notarized declaration in the form of affidavit in support of not only their complaint, but also their Brief In Support of Objection to Summary Judgment, **Exhibit "AL"**. Plaintiffs submitted their Declaration in the form of affidavits

since it is against their deeply held spiritual convictions to swear oaths. Plaintiffs notice this court that not one of the Defendant Constables ever submitted an affidavit in their own defense or in support of summary judgment.

Further, failure by the Constables to issue Scott Lawvere a Miranda warning during interrogation is actionable under 42 U.S.C. § 1983. Ney v. California, (1971 CA 9 Cal) 439 F.2d 1285; Miranda v. Arizona, (1966) 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602.

CONCLUSION

The facts, pleadings, and case law on the record show that there were genuine issues of material fact. Therefore, there are questions for review of the decisions made by the Third Circuit Court of Appeals supporting the actions and failure to act by the Middle District of Pennsylvania. Petitioners renew their reasons to this Court why a Writ should issue.

Respectfully submitted,

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